

## AGREEMENT

THIS JOINT USE AND OPERATION AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as defined in Article I hereof), by and between the MASON CITY SCHOOL DISTRICT (the "School District") and THE CITY OF MASON (the "City").

### WITNESSETH THAT:

WHEREAS, the residents of the School District have passed a tax levy for, among other things, the construction, furnishing and equipping of a new high school and a community recreation center; and

WHEREAS, the City owns the real estate on which said high school and community recreation center have been constructed; and

WHEREAS, as evidenced by an Agreement to Proceed with a Community Recreation Center, dated December 15, 1999, the parties wish to coordinate their efforts to serve the educational and recreational needs of the Parties by participating jointly in the operation and maintenance of said community recreation center and certain portions of said real estate on which the community recreation center has been constructed pursuant to applicable provisions of the Ohio Revised Code, including O.R.C. § 755.16; and

WHEREAS, by adopting this Agreement, the parties hereto are engaging in a governmental function to provide for the health, safety and general welfare of their respective residents and not for the purpose of sharing profits and losses or otherwise engaging in any proprietary function.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

### **ARTICLE I DEFINITIONS**

As used in this Agreement, the following terms have the following meanings unless the context clearly indicates otherwise (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"ACADEMIC YEAR" means the regular academic year for students attending Mason City Schools, as established by the School Board, beginning with the first day of classes each fall and ending with the last day of classes each spring or, to the extent mutually agreed upon by the Parties, ending at any time thereafter.

"ADDITIONAL FACILITIES" means, collectively or individually, the Gas Line Facilities, Sewer Facilities, Water Facilities, Utility Facilities, City Municipal Sign and Community Facilities Sign, as more particularly described in Section 2.3 hereof.

"ADVISORY COMMITTEE" means the group composed of the individuals described in Section 10.1(a) of this Agreement.

"AQUATIC OFFICE" means the office located next to the Competition Pool and designated on the Floor Plan as the "Aquatic Office".

"ASST SUPERINTENDENT OF OPERATIONS" means the then acting Assistant Superintendent of Operations of the School District.

"AUDITORIUM" means the auditorium located in the Interior Shared Areas (as defined in Section 2.1(b)(i)(2) hereof) and designated as the "Auditorium" on the Floor Plan.

"BASIC BUILDING SERVICES COSTS" means all of the costs and expenses incurred in connection with the Basic Building Services and any costs and expenses which are specifically required by this Agreement to be paid out of the Basic Building Services Fund, provided that no such costs shall be deemed to have accrued before March 2, 2003.

"BASIC BUILDING SERVICES FUND" means the fund described in Article V of this Agreement.

"BASIC BUILDING SERVICES" means the (a) Utilities (as defined in Section 9.1 hereof) to be provided with respect to the Community Facilities; (b) Maintenance (as defined in Section 9.2 hereof) to be provided; (c) Insurance (as defined in Section 9.3(a) hereof) coverage with respect to the Community Facilities; (d) repair and restoration related to Casualty (as defined in Section 9.4 hereof) and Condemnation (as defined in Section 9.6 hereof); (e) the provision of Basic Security (as defined in Section 9.8 hereof) to the Shared Areas; and (f) all other services which are described under this Agreement as being part of "Basic Building Services".

"CITY" means the City of Mason.

"CITY COUNCIL" means the City Council of the City of Mason.

"CITY MANAGER" means the then acting manager of the City.

"CITY MUNICIPAL SIGN" means the Sign located on that portion of the Contiguous Parcel that is designated as the "City Municipal Sign" on the Site Plan.

"COMMENCEMENT DATE" means March 1, 2003.

"COMMUNITY CENTER" means that portion of the Community Facility described in Section 2.1(b)(i)(1) of this Agreement.

"COMMUNITY CENTER EXPENSES" means all of the costs and expenses incurred in connection with the Community Center Services and any costs and expenses which are specifically required by this Agreement to be paid out of the Community Center Fund, provided that no such expenses shall be deemed to have accrued before March 2, 2003.

"COMMUNITY CENTER FUND" means the fund described in Article VI of this Agreement.

"COMMUNITY CENTER MANAGER" means the then acting manager of the Community Center, hired and employed by the City.

"COMMUNITY CENTER SERVICES" means the (a) alterations and improvements authorized pursuant to Articles VIII and XIII of this Agreement; (b) maintenance, services and insurance required in connection with the Equipment and New Equipment pursuant to Article VIII hereof; (c) Staff for Day-to-Day Operations; (d) Supervision of the Competition Pool; (e) sanitation, cleaning, chemical treating, chemical testing and maintenance of the Leisure Pool and Competition Pool; and (f) all other services or activities which are described under this Agreement as "Community Center Services".

"COMMUNITY FACILITIES" means the Community Facility, Community Facility Parking Lots, Community Facility Driveways, Community Facility Sidewalks, Main Sign and High School Sign, as more particularly described in Section 2.1(b) of this Agreement.

"COMMUNITY FACILITIES SIGN" means the Sign located on that portion of the Land that is designated as the "Community Facilities Sign" on the Site Plan.

"COMMUNITY FACILITY" means that portion of the Project described in Section 2.1(b)(i) of this Agreement, consisting of the (a) Community Center, (b) Shared Areas, and (c) Community Facility Hallways.

"COMMUNITY FACILITY DRIVEWAYS" means those Driveways located on the Land specifically for the benefit and use of the Community Facility, as more particularly described in Section 2.1(b)(ii) of this Agreement.

"COMMUNITY FACILITY HALLWAYS" means those hallways and other walkways located within the interior portions of the Community Facility to provide access to the various areas within the interior portions of the Community Facility, as more particularly described in Section 2.1(b)(i)(3) of this Agreement.

"COMMUNITY FACILITY PARKING LOTS" means those Parking Lots located on the Land specifically for the benefit and use of the Community Facility, as more particularly described in Section 2.1(b)(iii) of this Agreement.

"COMMUNITY FACILITY SIDEWALKS" means those Sidewalks located on the Land and on a portion of the Contiguous Parcel specifically for the benefit and use of the Community Facility, as more particularly described in Section 2.1(b)(iv) of this Agreement.

"COMPETITION POOL" means that portion of the Interior Shared Areas consisting of a twenty-five (25) meter by twenty-five (25) yard swimming pool and related equipment (including, by way of example but not limitation, timing systems, starting blocks and maintenance equipment) and facilities (including, by way of example but not limitation, spectator bleachers, and mechanical pump room), which is designated as the "Competition Pool" on the Floor Plan.

"CONTIGUOUS PARCEL" means that certain parcel of land owned by the City that is contiguous to the Land and that is more particularly defined and described in the Easement Agreement.

"CONTRACT YEAR" means the fiscal year of the City, which runs from January 1 to December 31 of each calendar year.

"COURTS" means the six (6) basketball courts located in the Interior Shared Areas, two (2) of which are located in the Gymnasium and four (4) of which are located in the Field House and all of which are designated as a "Court" on the Floor Plan.

"DAY-TO-DAY OPERATIONS" means the decisions occurring on a regular and routine basis regarding the management (i.e. staffing) of the Community Center.

"DRIVEWAYS" means the School Driveways and Community Facility Driveways located on the Land and more particularly described in the following Sections 2.1(a)(ii) and 2.1(b)(ii), respectively.

"EASEMENT AGREEMENT" means the Restrictions and Easement Agreement between the Parties, as more particularly described in Section 14.12 of this Agreement.

"EFFECTIVE DATE" the date upon which this Agreement shall be effective is June 1, 2002.

"EIGHTEEN MONTH PERIOD" means each consecutive eighteen (18) month period during the term of this Agreement, with the first such eighteen (18) month period commencing on the Commencement Date.

"EQUIPMENT" means the fitness and weight equipment, furniture, technology equipment, aquatic equipment (exclusive of any aquatic mechanical, filtration and circulation systems which are hereby deemed to be fixtures and part of the structure of the Community Facilities), including the initial Equipment acquired and paid for by the School District as provided in Section 3.5 of this Agreement and any replacements thereof, provided that the term "Equipment" shall not include any heating, ventilation or air conditioning systems, plumbing, electrical and other utility systems, all of which are hereby deemed to be fixtures and part of the structure of the Community Facilities.

"FIELD HOUSE" means that portion of the Interior Shared Areas consisting of four (4) of the Courts and other areas and designated as the "Field House" on the Floor Plan.

"FINANCE DIRECTOR" means the then acting financial officer of the City.

"FLOOR PLAN" means the drawing which depicts the Community Facility (other than the Outdoor Recreation/Athletic Facilities which are depicted on the Site Plan) and the High School, as constructed on the Land, and the various rooms and areas within the Community Facility (other than the Outdoor Recreation/Athletic Facilities which are depicted on the Site Plan) and the High School. A true and accurate copy of the Floor Plan is attached hereto as Exhibit "A".

"GAS LINE FACILITIES" means those certain gas lines and related facilities which are located in the area described in Section 2.3(a) of this Agreement.

"GUARD OFFICE" means the office located in the Interior Shared Areas and designated on the Floor Plan as the "Guard".

"GYMNASIUM" means the two (2) Court gymnasium located in the Interior Shared Areas and designated on the Floor Plan as the "Gymnasium".

"GYMNASIUM OFFICE" means the office located next to the Gymnasium and designated on the Floor Plan as the "Gymnasium Office".

"HIGH SCHOOL FACILITIES" means the High School, School Parking Lots, School Driveways, School Sidewalks and certain other unimproved areas located on the Land, as more particularly described in Section 2.1(a) of this Agreement. The High School Facilities shall also include any other improvements (except the Community Facilities and Perimeter Road) made by the School District pursuant to the Ground Lease.

"HIGH SCHOOL" means the high school located on the Land and more particularly described in Section 2.1(a)(i) of this Agreement.

"HIGH SCHOOL SIGN" means the Sign located on that portion of the Land that is designated as the "High School Sign" on the Site Plan.

"LAND" means that certain parcel of real estate owned by the City and more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

"LEISURE POOL" means the pool located in the Community Center and designated as the "Leisure Pool" on the Floor Plan.

"MAIN SIGN" the Sign designated as the "Main Sign" on the Site Plan.

"NEW EQUIPMENT" means additional equipment for the Community Facility which has been acquired pursuant to Section 8.2 of this Agreement.

"OUTDOOR RECREATION/ATHLETIC FACILITIES" means those outdoor facilities located on the Land, as described in Section 2.1(b)(i)(2) hereof, that have been developed for the purpose of educational, instructional, athletic and/or leisure needs or use of the community of the City of Mason and the Mason City School District and other users of the Project Improvements.

"PARKING LOTS" means the School Parking Lots and Community Facility Parking Lots located on the Land and more particularly described in the following Sections 2.1(a)(iii) and 2.1(b)(iii), respectively.

"PARTY" means the City or the School District and their respective successors and assigns (subject to Section 14.7 hereof).

"PARTY WALL" means the common wall, roof, hallway and utility lines shared by the Community Facility and High School, but excluding the Additional Facilities.

"PERIMETER ROAD" means the road located around the perimeter of the Land and on a portion of the Contiguous Parcel and more particularly defined and described in the Ground Lease and Section 2.2 of this Agreement.

"POOL MECHANICAL ROOM" means the room in the Interior Shared Areas that houses the pump and related mechanical equipment for the Competition Pool and is designated on the Floor Plan as the "Pool Mech. Room".

"POOL STORAGE ROOM" means the storage room located in the Interior Shared Areas and used in connection with the storage of aquatic equipment and supplies that are routinely required and necessary for the operation of the Competition Pool and Leisure Pool and is designated as the "Pool Stor." on the Floor Plan.

"PROJECT" means all of the facilities described in Article II of this Agreement, consisting of the (a) Project Improvements, (b) Perimeter Road, (c) Additional Facilities and (d) any future expansions, replacements, modifications, additions and alterations, regardless of which Party makes causes or makes such expansions, replacements, modifications, additions and alterations, to any of the improvements described in the preceding subparts (a) through (c).

"PROJECT IMPROVEMENTS" means the Community Facilities and High School Facilities, as more particularly described in Section 2.1 of this Agreement.

"SCHOOL BOARD" means the Board of Education of the School District.

"SCHOOL DISTRICT" means the Mason City School District, which is constituted and organized as required by the statutes of the State of Ohio.

"SCHOOL DRIVEWAYS" means those Driveways to be constructed on the Land to be specifically for the use and benefit of the High School, as more particularly described in Section 2.1(a)(ii) of this Agreement.

"SCHOOL FISCAL YEAR" means the fiscal year of the School Board, which runs from July 1st to June 30th of each calendar year.

"SCHOOL PARKING LOTS" means those Parking Lots located on the Land specifically for the use and benefit of the High School, as more particularly described in Section 2.1(a)(iii) of this Agreement.

"SCHOOL SIDEWALKS" means those Sidewalks located on the Land specifically for the use and benefit of the High School, as more particularly described in Section 2.1(a)(iv) of this Agreement.

"SEWER FACILITIES" means the sewer lines and related facilities located in the area described in Section 2.3(b) of this Agreement.

"SHARED AREAS" means those areas described in Section 2.1(b)(i)(2) of this Agreement.

"SIDEWALKS" means the Community Facility Sidewalks and School Sidewalks located on the Land, as more particularly described in the following Sections 2.1(b)(iv) and 2.1(a)(iv), respectively.

"SIGNS" means the four (4) signs, designating various portions of the Project and/or the name of the City Municipal Building (as defined by the Ground Lease), located on those areas designated on the Site Plan.

"SITE PLAN" means the drawing which depicts the Project, as constructed on the Land and portions of the Contiguous Parcel. A true and accurate copy of the Site Plan is attached hereto as Exhibit "C".

"SIX MONTH PERIOD" means each consecutive six (6) month period during the term of this Agreement, with the first such six (6) month period commencing on the Commencement Date.

"STAFF" means trained individuals who are employed by the City or by the School District to oversee the Day-to-Day Operations of the Community Facilities and/or to oversee the use, Maintenance, operation or Supervision of the Community Facilities as provided by this Agreement.

"SUPERINTENDENT" means the then acting Superintendent of the School District.

"SUPERVISION" means the obligation to have on-site an adequate number of trained individuals to properly oversee the activities occurring on or in the Project.

"TREASURER" means the then acting financial officer of the School District.

"UTILITY FACILITIES" means those certain utility lines and related facilities which are located in the area described in Section 2.3(d) of this Agreement.

"WATER FACILITIES" means the water lines and related facilities located in the area described in Section 2.3(c) of this Agreement.

## **ARTICLE II DESCRIPTION OF THE PROJECT**

The Project will consist of the Project Improvements, Perimeter Road and Additional Facilities, as hereinafter described:

2.1 Project Improvements. The Project Improvements consist of the High School Facilities and Community Facilities and all other improvements constructed and installed (except the Perimeter Road and Additional Facilities) on the Land pursuant to the terms of the Ground Lease, as hereinafter described.

(a) High School Facilities. The High School Facilities consist of the High School, School Driveways, School Parking Lots, School Sidewalks and certain other unimproved areas, as hereinafter described.

(i) High School. The High School currently contains approximately Three Hundred Thousand Seventy-Five and Ten (375,010) square feet of floor area, as color blocked in green on the Floor Plan.

(ii) School Driveways. The School Driveways are color blocked in dark blue on the Site Plan.

(iii) School Parking Lots. The School Parking Lots are color blocked in yellow on the Site Plan.

(iv) School Sidewalks. The School Sidewalks are color blocked in orange on the Site Plan.

(v) Other Unimproved Areas. The other unimproved areas that are part of the High School Facilities are color blocked in green on the Site Plan.

(b) Community Facilities. The Community Facilities consists of the Community Facility, Community Facility Driveways, Community Facility Sidewalks, Community Facility Parking Lots, Main Sign and High School Sign, all as hereinafter described.

(i) Community Facility. The Community Facility consists of the Community Center and Shared Areas, as hereinafter described.

(1) Community Center. The Community Center currently contains approximately Sixty-Nine Thousand Two Hundred Five (69,205) square feet of floor area in the rooms and areas which are color blocked in gray on the Floor Plan.

(2) Shared Areas. The Shared Areas currently contain the following: (A) approximately Eighty-Nine Thousand Eighty (89,080) square feet of floor area in the interior portions of the Project Improvements which are color blocked in blue on the Floor Plan (the "Interior Shared Areas"), (B) the Outdoor Recreation/Athletic Facilities, which are designated as the "Outdoor Recreation/Athletic Facilities" on the Site Plan, and (C) certain other unimproved areas on the Land which are color blocked in light green on the Site Plan.

(3) Community Facility Hallways. The Community Facility Hallways are the hallways and pathways located within the Community Facility connecting various areas within the Community Center and Interior Shared Areas and various areas within the Community Center and/or Interior Shared Areas with the High School.

(ii) Community Facility Driveways. The Community Facility Driveways are color blocked in light blue on the Site Plan.

(iii) Community Facility Parking Lots. The Community Facility Parking Lots are color blocked in red on the Site Plan.

(iv) Community Facility Sidewalks. The Community Facility Sidewalks are color blocked in dark gray on the Site Plan.

(v) Signs. The High School Sign and the Main Sign shall be included within the Community Facilities.

2.2 Perimeter Road. The Perimeter Road is designated on the Site Plan by vertical cross hatch.



2.3 Additional Facilities. The Additional Facilities consist of the Gas Line Facilities, Sewer Facilities, Water Facilities, City Municipal Sign and Community Facilities Sign.

(a) Gas Line Facilities. The Gas Line Facilities are located in the Gas Line Easement Area, as defined by the Easement Agreement.

(b) Sewer Facilities. The Sewer Facilities are located in the Sewer Easement Area, as defined by the Easement Agreement.

(c) Water Facilities. The Water Facilities are located in the Water Easement Area, as defined by the Easement Agreement.

(d) Utility Facilities. The Utility Facilities are located in the Utility Easement Area, as defined by the Easement Agreement.

(e) Signs. The City Municipal Sign and Community Facilities Sign shall be included within the Additional Facilities.

### **ARTICLE III CONTRIBUTIONS BY THE PARTIES**

3.1 Contribution by the City. The City shall (a) lease the Land to the School District pursuant to the Ground Lease; (b) pay for the cost of constructing and installing the Water Line Facilities and Sewer Facilities; and (c) pay for the cost of constructing and installing the City Municipal Sign, High School Sign and Community Facilities Sign. The School District shall sublease to the City the Community Center for a term of ninety-nine (99) years pursuant to the fully executed Sublease attached hereto as Exhibit "D" and made a part hereof (the "Sublease").

3.2 Contribution by the School District. The School District shall pay for the cost of (a) planning and constructing the Community Facilities and Perimeter Road, (b) purchasing the initial Equipment as provided in Section 3.5 hereof and (c) constructing and installing the Main Sign. The School District shall lease from the City for a term of ninety-nine (99) years the Land, pursuant to the fully executed ground lease attached hereto as Exhibit "E" and made a part hereof (the "Ground Lease"), and shall pay for the costs of planning and constructing the High School.

3.3 Ownership of the Project. The School District shall be the fee owner of record of the Project Improvements and that portion of the Perimeter Road located on the Land and all other improvements constructed on the Land by or on behalf of the School District (including, without limitation, any future expansion, replacements or modifications of or additions or alterations to the Project Improvements or said portion of the Perimeter Road), and as a consequence thereof, the School District shall have final decision-making authority with regard to all aspects of the maintenance and operation of same, subject to (a) the express terms and conditions of this Agreement, the Ground Lease, the Sublease, and the Easement Agreement and (b) all laws, rules, orders, and regulations of governmental bodies (federal, state, and local) affecting the Parties or the Land, buildings, and transactions described herein. In addition, (a) the High School shall always be named, on its exterior, only the "Mason High School", (b) the Community Center shall always be named, on its exterior, only the "Mason Community Center", (c) the School District shall be the owner of all rights to name the interior portions of the High School and shall be entitled to retain all revenues earned in connection with those naming rights,

(d) the City shall be the owner of all rights to name the interior portions of the Community Center and shall be entitled to retain all revenues earned in connection with those naming rights, and (e) the School District and the City shall share the naming rights to the interior portions of the Interior Shared Areas, provided that the School District and City must mutually agree upon any interior names within the Interior Shared Areas and shall share all revenues generated therefrom such that the High School shall receive fifty (50%) percent of such revenues and the Community Center Fund shall receive fifty (50%) percent of such revenues. The School District is the owner of the Equipment initially purchased by the School District as provided in Section 3.5 hereof. The School District shall consult with the City before rendering final decisions pertaining to the Project when such decisions will or are reasonably likely to adversely affect the City's use of the Community Facilities or said portion of the Perimeter Road or the structural integrity of the Community Facility.

3.4 Recorded Documents. Upon execution of this Agreement, each Party shall execute and deliver to the other Party the Easement Agreement as well as the following documents, mutually acceptable to the Parties and properly executed and in recordable form: (a) a memorandum of the Ground Lease, prepared by the School District and approved by the City; (b) a memorandum of the Sublease, prepared by the School District and approved by the City; and (c) a memorandum of this Agreement, prepared by the School District and approved by the City. The School District shall cause the foregoing instruments to be recorded and shall deliver copies of the Easement Agreement, memorandum of the Ground Lease, memorandum of the Sublease and memorandum of this Agreement, stamped "Filed", to the City promptly after recordation thereof. Any recording costs incurred in connection with the foregoing shall be shared equally by the Parties.

3.5 Equipment. The School District has paid for all of the costs and expenses of acquiring the initial Equipment for the Community Facility. The maintenance and replacement of the Equipment shall be governed by Sections 8.2 and 9.4 of this Agreement.

3.6 Fiscal Matters. The fiscal management of the Project shall be as set forth in Article VI of this Agreement.

#### **ARTICLE IV USE OF THE PROJECT**

Use of the Project by the Parties shall be established and governed by the provisions of this Article IV.

4.1 Use of the High School Facilities. Subject to the Easement Agreement, the School District shall have the exclusive use of the High School Facilities, provided that the Parties may agree in writing to permit the City to periodically use portions of the High School Facilities as more particularly provided in Section 4.4(a) hereof. Notwithstanding the foregoing and Section 4.4(a) hereof, the School District shall have the right to charge the City a fee in connection with any use of the High School Facilities by the City under this Article IV, provided that such fee shall be limited to an amount equal to the difference between (a) the incremental costs actually incurred by the School District in connection with such use (the "School Incremental Costs") and (b) any School Incremental Costs already paid for by the City under the other terms and conditions of this Agreement.

4.2 Use of the Community Center. Subject to the Easement Agreement, the City shall have the exclusive use of the Community Center, provided that the Parties may agree in writing to permit the School District to periodically use portions of the Community Center as more particularly provided in Section 4.4(a) hereof. Notwithstanding the foregoing and Section 4.4(a) hereof, the City shall have the right to charge the School District a fee in connection with any use of the Community Center by the School District under this Article IV, provided that such fee shall be limited to an amount equal to the difference between (a) the incremental costs actually incurred by the City in connection with such use (the "City Incremental Costs") and (b) any City Incremental Costs already paid for by the School District under the other terms and conditions of this Agreement. The foregoing notwithstanding, the City and School District shall, as promptly as is reasonably possible and in good faith, enter into a separate written agreement pursuant to which the School District, alone, shall manage the operation of and the provision of food and beverage services for that area in the Community Center designated as the "Café" on the Floor Plan and shall retain all profits from such operation and food and beverage service and including such other terms and conditions as are mutually acceptable to the Parties.

4.3 Use of Shared Areas.

(a) Shared Use Schedule.

(i) Shared Use. The parties shall share, equally, the use of the Shared Areas for their respective Purposes (as defined in Section 4.3(b)(i)(2) hereof) unless otherwise provided in this Agreement or in any applicable Shared Use Schedule (as defined in Section 4.3(a)(ii) hereof) or as mutually agreed upon by the Parties from time to time under Section 4.3(a)(ii) hereof.

(ii) Scheduling Meeting. For planning and efficiency purposes, the Parties agree that a schedule of use of the Shared Areas ("Shared Use Schedule") shall be adopted in accordance with this Section 4.3(a)(ii) such that each Eighteen Month Period is subject to a Shared Use Schedule, provided that the Shared Use Schedule applicable to the first Eighteen Month Period shall be as set forth on Exhibit "F" ("Shared Facility Usage Plan") which is attached hereto. On the last day of each Six Month Period, the Asst Superintendent of Operations, or his or her designee, and the Community Center Manager, or his or her designee, shall meet ("Scheduling Meeting" or, collectively, "Scheduling Meetings") for purposes of (1) confirming or adjusting, as the case may be, the then current Shared Use Schedule with respect to the unexpired portion of the Eighteen Month Period applicable to such Shared Use Schedule and (2) agreeing upon the scheduled use of the Shared Areas for the Six Month Period immediately following expiration of the Eighteen Month Period to which such Shared Use Schedule is applicable. Notwithstanding the foregoing, if the last day of any Six Month Period falls on a Saturday, Sunday or any holiday observed by the City and/or the School District, the Scheduling Meeting applicable to such Six Month Period shall occur on the first day that is not a Saturday, Sunday or such holiday occurring immediately prior to the last day of such Six Month Period. The foregoing notwithstanding, the Parties may mutually agree to modify or change any Shared Use Schedule or any other scheduled use as set forth under Section 4.3(b) hereof at times other than during a Scheduling Meeting; however, such modification or changing of scheduled use shall not be interpreted as a

modification of this Agreement. Other representatives of the Parties may be present for any Scheduling Meeting; however, the Asst Superintendent of Operations, or his or her designee, shall act as the primary spokesperson for the School District, and the Community Center Manager, or his or her designee, shall act as the primary spokesperson for the City. Further, the foregoing schedule of Scheduling Meetings shall not preclude the Asst Superintendent of Operations, or his or her designee, and the Community Center Manager, or his or her designee, from mutually agreeing to meet more frequently with respect to issues related to scheduling.

(b) Required Scheduling. Notwithstanding the foregoing, during each Eighteen Month Period, unless otherwise agreed to at a Scheduling Meeting or otherwise in writing by the Asst Superintendent of Operations and Community Center Manager, the Shared Use Schedule applicable thereto shall be subject to the scheduling requirements set forth below.

(i) Competition Pool, Gymnasium, Field House and Auditorium.

(1) School District Use. The School District shall have priority of use of the Competition Pool, Gymnasium, Field House and Auditorium for educational, athletic meets and practices, special events and extracurricular related purposes (collectively, "School Purposes") during those times designated as "School Priority Use" on the applicable pages of the Shared Facility Usage Plan.

(2) City Use. The City shall have priority of use of the Competition Pool, Gymnasium, Field House and Auditorium for community recreation and fitness related purposes (collectively "City Purposes") (collectively, the City Purposes and School Purposes shall be referred to herein as "Purposes" or, as to either of them, "Purposes") during those times designated as "City Priority Use" on the applicable pages of the Shared Facility Usage Plan.

(ii) Gymnasium Office. The School District and the City shall share, equally, at all times, the use of the Gymnasium Office.

(iii) Aquatic Office, Guard Rooms and Pool Mechanical Room. Notwithstanding the foregoing, in connection with performing its obligation to provide Supervision and maintenance of the Competition Pool pursuant to Sections 8.4(b) and 8.5 hereof, respectively, the City shall have exclusive use of the Aquatic Office, Guard Rooms and Pool Mechanical Room at all times for its full-time Staff, provided that the School District 's Staff shall have reasonable access to the Aquatic Office for purposes of providing Supervision for School District activities.

(iv) Storage E136. The Parties shall share, equally, at all times, the use of the room in the Shared Areas designated as "Storage E136" on the Floor Plan for the storage of each Party's sporting or athletic equipment routinely required or

necessary in connection with the operation and use of the Field House and/or the Gymnasium.

(v) Outdoor Recreation/Athletic Facilities.

(1) School District Use. The School District shall have priority of use of the Outdoor Recreation/Athletic Facilities for School Purposes at all times during each Academic Year.

(2) City Use. The City shall have priority of use of the Outdoor Recreation/Athletic Facilities for City Purposes at all times other than during any Academic Year.

4.4 Scope of Use Defined.

(a) Exclusive Use. The words "exclusive use" when referring to the City's or the School District's (as to either, "Exclusive Party") right to use a particular area of the Project for such Exclusive Party's Purposes shall mean that such Exclusive Party has the right to use such area of the Project for its Purposes to the complete exclusion of the other Party ("Non-Exclusive Party"), and such Non-Exclusive Party has no right to use such area of the Project for any reason (even its Purposes) unless the Exclusive Party consents to such use in writing. The following, which are provided by way of example and not limitation, shall constitute reasonable grounds for an Exclusive Party to withhold such consent: (i) the use requested by the Non-Exclusive Party is unrelated to its Purposes, (ii) the use is reasonably likely to create a material risk of injury to persons or of damage to the applicable area of the Project or any Equipment or personal property located therein, and/or (iii) the time that the applicable use is to occur conflicts with an event already planned to occur in the applicable area of the Project.

(b) Priority of Use. The words "priority of use", when referring to the City's or the School District's (as to either, "Priority Party") right to use a particular area of the Shared Areas for such Priority Party's Purposes, shall mean that such Priority Party shall have the first right to use such area of the Shared Areas ("Priority Area") during the applicable scheduled time period under Section 4.3(b) hereof or any applicable Shared Use Schedule or pursuant to any mutual agreement of the Parties (or the Asst Superintendent of Operations and the Community Center Manager) ("Priority Time") such that the other Party ("Non-Priority Party") shall have no right to use such Priority Area during such Priority Time if the Priority Party has, at that time, an event planned to occur in such Priority Area at such Priority Time. In the event that a Non-Priority Party desires to use a Priority Area during a Priority Time, the Non-Priority Party shall submit a written request to the Priority Party identifying (i) which part of the Priority Area the Non-Priority Party would like to use, (ii) what is the purpose of the use (which shall be at least one of the Purposes of the Non-Priority Party), and (iii) the specific time period within the Priority Time ("Applicable Time Period") that such use is to take place (collectively, "Request"). The Priority Party may only refuse a Request if the Priority Party has, during the Applicable Time Period, an event planned to occur in the applicable Priority Area which conflicts with the applicable Request; provided that if the Priority Party fails to grant or refuse such Request within five (5) business days from the date the

Priority Party receives the Request, the Priority Party shall be deemed to have granted such Request.

(c) Shared Use. The words "shall share, equally" when referring to the City's and the School District's shared use of particular areas within the Shared Areas for their respective Purposes at certain scheduled times as provided in Section 4.3(b) hereof or any applicable Shared Use Schedule or pursuant to any mutual agreement of the Parties (or the Asst Superintendent of Operations and the Community Center Manager) shall mean that neither Party shall have the right to use any such area to the exclusion of the other Party or otherwise have any superior right to use such area during such scheduled times and shall require each Party to cooperate with each other in good faith to promote the harmonious use of such areas during such time periods of shared and equal use.

(d) Event Planned to Occur. The words "event planned to occur" means, with respect to either Party ("Planning Party"), an event or program, sponsored or managed by the Planning Party, which has been set to occur at a specific time and place and incorporated into the Planning Party's internal scheduling of its events and programs.

(e) Scheduled Use. The words "scheduled use" means, with respect to either Party ("Scheduled Party"), those time periods during which, under Section 4.3(b) hereof or any applicable Shared Use Schedule or pursuant to any mutual agreement of the Parties (or the Asst Superintendent of Operations and the Community Center Manager), the Scheduled Party is scheduled to use a particular area within the Shared Areas or events, which are sponsored or planned by the Scheduled Party, are planned to occur in a particular area within the Shared Areas, whether or not the Scheduled Party actually uses such area or such events actually occur in such area during the applicable time periods.

(f) Unscheduled Use. The words "unscheduled use" means those time periods during which neither Party has scheduled use with respect to a particular area of the Shared Areas.

4.5 Community Facility Hallways. Each Party shall have the non-exclusive right to use the Community Facility Hallways for the purpose of accessing the Community Center, Interior Shared Areas and High School during such Party's scheduled use applicable to such area.

4.6 Supervision and Scheduling. The parties hereto acknowledge the need for effective and adequate Supervision during use of the Project and scheduling of events within the Project, and agree to the following:

(a) Shared Areas.

(i) Generally. Each Party shall be responsible for providing adequate Supervision during its scheduled use of the Shared Areas and to provide an adequately trained Staff to oversee such Party's scheduled use.

(ii) Competition Pool. Notwithstanding the foregoing, the City shall be responsible for providing adequate Supervision for the Competition Pool.

(iii) Auditorium. Notwithstanding the foregoing, the School District shall be responsible for providing adequate Staff (including, without limitation, Supervision) to oversee use of the Auditorium.

(b) High School Facilities. The School District shall be responsible for providing Supervision to the High School Facilities and to provide an adequately trained Staff to oversee use of the High School Facilities. Notwithstanding the foregoing, in the event the School District permits the City to use the High School Facilities pursuant to Section 4.4(a) hereof, the School District shall not be obligated to provide Supervision for such use nor shall the School District have any liability to the City arising in connection therewith.

(c) Community Center. The City shall be responsible for providing Supervision to the Community Center and to provide an adequately trained Staff to oversee use of the Community Center. Notwithstanding the foregoing, in the event the City permits the School District to use the Community Center pursuant to Section 4.4(a) hereof, the City shall not be obligated to provide Supervision for such use nor shall the City have any liability to the School District arising in connection therewith.

4.7 Rules and Regulations. The Parties, through their respective representatives, shall collaborate and mutually agree upon standard rules and regulations to govern the use of the Shared Areas to ensure consistency of use by the Parties.

## **ARTICLE V FUNDING OF BASIC BUILDING SERVICES**

5.1 Funding Obligations of the Parties. Each of the Parties hereby agrees to the funding obligations set forth in this Article V with respect to the Basic Building Services, whether or not the Community Facilities are actually used by the scheduling Party. The Basic Building Services Fund shall be established, maintained and operated as provided in this Article V.

5.2 Initial Contributions.

(a) Subsidy Payments. During the period commencing on the Commencement Date and expiring on June 30, 2005, (i) the School District shall be required to pay, out of its own funds, the following amounts (1) \$1,000,000.00 ("Million Dollar Payment") with respect to the first School Fiscal Year (which is a partial School Fiscal Year and covers the period commencing on the Commencement Date and expiring on June 30, 2003), which shall be due on the Commencement Date, (2) \$600,000.00 ("First \$600,000 Payment") with respect to the second School Fiscal Year, which shall be due on January 1, 2004, and (3) \$600,000.00 ("Second \$600,000 Payment") (collectively the Million Dollar Payment, First \$600,000 Payment and Second \$600,000 Payment shall be referred to herein as "School Subsidy Payments", or as to any one of them, "School Subsidy Payment") with respect to the third School Fiscal Year, which shall be due on January 1, 2005; and (ii) the City shall be required to pay, out of its own funds, the following amounts (1) \$775,000.00 ("\$775,000 Payment") with respect to the first School Fiscal Year (which is a partial School Fiscal Year and covers the period commencing on the Commencement Date and expiring on June 30, 2003), which shall be due on the

Commencement Date, (2) \$465,00.00 ("First \$465,000 Payment") with respect to the second School Fiscal Year, which shall be due on January 1, 2004, and (3) \$465,000.00 ("Second \$465,000 Payment") (collectively, the \$775,000 Payment, First \$465,000 Payment and Second \$465,000 Payment shall be referred to herein as "City Subsidy Payments" or, as to any of them, "City Subsidy Payment") (collectively, the City Subsidy Payments and School Subsidy Payments shall be referred to herein as "Subsidy Payments" or, as to any of them, "Subsidy Payment"), with respect to the third School Fiscal Year, which shall be due on January 1, 2005. Each Subsidy Payment shall be delivered to the Treasurer, in the amounts and on the dates provided above, for deposit into the Basic Building Services Fund.

(b) Reserve Payments. In addition to the Subsidy Payments, during the period commencing on the Commencement Date and expiring on June 30, 2005, (i) the School District shall be required to pay, out of its own funds, the following amounts (1) \$50,000.00 ("50,000 Reserve Payment") with respect to the first School Fiscal Year (which is a partial School Fiscal Year and covers the period commencing on the Commencement Date and expiring on June 30, 2003), which shall be due on the Commencement Date, (2) \$30,000.00 ("First \$30,000 Reserve Payment") with respect to the second School Fiscal Year, which shall be due on January 1, 2004, and (3) \$30,000.00 ("Second \$30,000 Reserve Payment") (collectively the \$50,000 Reserve Payment, First \$30,000 Reserve Payment and Second \$30,000 Reserve Payment shall be referred to herein as "School Reserve Payments", or as to any one of them, "School Reserve Payment") with respect to the third School Fiscal Year, which shall be due on January 1, 2005; and (ii) the City shall be required to pay, out of its own funds, the following amounts (1) \$38,750.00 ("38,750 Reserve Payment") with respect to the first School Fiscal Year (which is a partial School Fiscal Year and covers the period commencing on the Commencement Date and expiring on June 30, 2003), which shall be due on the Commencement Date, (2) \$23,250.00 ("First \$23,250 Reserve Payment") with respect to the second School Fiscal Year, which shall be due on January 1, 2004, and (3) \$23,250.00 ("Second \$23,250 Reserve Payment") (collectively, the \$38,750 Reserve Payment, First \$23,250 Reserve Payment and Second \$23,250 Reserve Payment shall be referred to herein as "City Reserve Payments" or, as to any of them, "City Reserve Payment") (collectively, the City Reserve Payments and School Reserve Payments shall be referred to herein as "Reserve Payments" or, as to any of them, "Reserve Payment"), with respect to the third School Fiscal Year, which shall be due on January 1, 2005. Each Reserve Payment shall be delivered to the Treasurer, in the amounts and on the dates provided above, and the Treasurer shall promptly deposit same into a reserve account ("Reserve Fund"). The Reserve Fund shall be fiscally managed and operated by the Treasurer as a fund separate from the Basic Building Services Fund, provided that the Reserve Fund shall be subject to the same terms and conditions that are applicable to the Basic Building Services Fund under Section 5.4 hereof and provided further that each Party's Reserve Payment shall be separately monitored and tracked for purposes of Sections 5.5(a)(i) and (ii) and 6.9 hereof. The Reserve Fund shall be used only to pay for Interim Deficits (as defined under Section 5.5(a)(i) hereof) and City Deficits (as defined in Section 5.5(a)(ii) hereof) hereof in accordance with and subject to Sections 5.5(a)(i) and (ii) hereof and for no other purpose unless mutually agreed upon by the Parties.



### 5.3 Remaining Source of Funds.

(a) Initial Estimated Payments. Commencing on July 1, 2005 and on July 1st of each School Fiscal Year thereafter and in accordance with the terms and conditions of this Section 5.3(a), each Party ("Paying Party") shall deliver to the Treasurer, for deposit into the Basic Building Services Fund, an amount of money equal to one half (1/2) of the sum of the following: (i) the Adjusted Estimated Share (as defined in Section 5.3(b) hereof) applicable to the preceding School Fiscal Year ("Preceding Adjusted Estimated Share") and (ii) the Estimated Reserve Amount (as defined in Section 5.3(b) hereof) (if any) applicable to the preceding School Fiscal Year ("Preceding Estimated Reserve Amount") (collectively, the Preceding Adjusted Estimated Share and Preceding Estimated Reserve Amount shall be referred to herein as "Initial Estimated Payment"). ***Example: For the third School Fiscal Year, the Adjusted Estimated Share is \$60,000.00, and the Estimated Reserve Amount is \$1,200.00 (using 2% as the basis for the Estimated Reserve Amount). On July 1st of the fourth School Fiscal Year, there shall be due from the City the City's Estimated Payment of \$30,600.00 which is determined as follows:  $\$30,600.00 = 1/2(\$60,000.00 + \$1,200.00)$ .*** Notwithstanding the foregoing, the Parties agree that with respect to the School Fiscal Year commencing on July 1, 2005 and expiring on June 30, 2006, each Party shall deliver, on July 1, 2005, to the Treasurer, for deposit into the Basic Building Services Fund, an Initial Estimated Payment equal to the sum of (i) that part of the Current Basic Building Services Budget (as defined in Section 5.3(b) hereof) for the preceding School Fiscal Year that is in proportion to such Party's Cost Allocation (as defined in Section 5.3(e)(vi) hereof) for the preceding School Fiscal year ("First Initial Estimated Share") and (ii) the product of a percentage, mutually agreeable to the Parties (which percentage shall be the same for both Parties), and such Party's First Initial Estimated Share.

(b) Adjusted Estimated Payments. The foregoing notwithstanding, within ten (10) days from the date the School District delivers to the City the Basic Building Services Budget (as defined in Section 5.4(b) hereof) applicable to the then current School Fiscal Year (the "Current Basic Building Services Budget"), each Paying Party shall deliver to the Treasurer, for deposit into the Basic Building Services Fund, a sum of money equal to the difference between the following (such difference being referred to herein as the "Adjusted Estimated Payment"): (i) the Initial Estimated Payment paid by such Paying Party for such current School Fiscal Year and (ii) the sum of (1) that part of the Current Basic Building Services Budget that is in proportion to the Paying Party's Cost Allocation for the preceding School Fiscal year (the "Adjusted Estimated Share") and (2) the product of a percentage, mutually agreeable to the Parties (which percentage shall be the same for both Parties), and such Paying Party's Adjusted Estimated Share (the "Estimated Reserve Amount"). The Initial Estimated Payment and Adjusted Estimated Payment shall be referred herein, collectively, as the "Estimated Payment". ***Example: For the fourth School Fiscal Year, the City has paid an Initial Estimated Payment of \$30,600.00 as provided in the Example under the foregoing Section 5.3(a). The Current Basic Building Services Budget for the fourth School Fiscal Year is \$150,000.00, and 60% of that amount is in proportion to the City's Cost Allocation for the third School Fiscal Year. Further, the percentage used to determine the Estimated Reserve Amount for the fourth School Fiscal Year is 3%. On December 10th of the fourth School Fiscal Year, there shall be due from the City \$62,100.00 which is***

*determined as follows:  $[(\$150,000.00 \times 60\%) + (90,000.00 \times 3\%)] - \$30,600.00 = \$62,100.00$ .*

(c) Reconciliation Approximately thirty (30) days after the expiration of each School Fiscal Year during the term of this Agreement or as soon thereafter as possible, the School District shall cause the Treasurer to furnish each Paying Party with the School Fiscal Year Basic Building Services Statement (as defined in Section 5.4(d) hereof) for such expired School Fiscal Year, which School Fiscal Year Basic Building Services Statement shall include the actual Basic Building Services Costs incurred for such expired School Fiscal Year ("Actual Basic Building Services Costs") and which shall be delivered with the Statement of Allocation (as defined in Section 5.3(e)(i) hereof) required under Section 5.3(e)(i) hereof for such expired School Fiscal Year. If the sum of (i) that portion of the Actual Basic Building Services Costs that is in proportion to a Paying Party's Cost Allocation for such expired School Fiscal Year ("Actual Share") and (ii) the product of such Actual Share and the percentage used to determine the Estimated Reserve Amount for such expired School Fiscal Year ("Actual Reserve Amount") (collectively, the Actual Share and Actual Reserve Amount shall be referred to herein as "Actual Payment") (as to any Estimated Payment or Actual Payment, "Payment" or, collectively, "Payments") is greater than the Estimated Payment paid by such Paying Party during such expired School Fiscal Year) actually paid by such Paying Party for the applicable expired School Fiscal Year, within thirty (30) days of the delivery of the applicable School Fiscal Year Basic Building Services Statement to such Paying Party, a lump sum payment will be made by such Paying Party to the Treasurer, for deposit into the Basic Building Services Fund, of an amount equal to the difference between the Actual Payment and the Estimated Payment actually paid by such Paying Party for the applicable expired School Fiscal Year. If, however, a Paying Party's Actual Payment for such expired School Fiscal Year is less than the Estimated Payment actually paid for the applicable expired School Fiscal Year, the School District shall cause the Treasurer to promptly, after delivery of the applicable School Fiscal Year Basic Building Services Statement (but in no event within less than thirty (30) days), make a lump sum payment to such Paying Party equal to the difference between the Estimated Payment for such expired School Fiscal Year and the Actual Payment applicable thereto. The obligations contained in this Section 5.3(c) shall survive the expiration or termination of this Agreement. ***Example: For the fourth School Fiscal Year, the City has paid an Estimated Payment of \$92,700.00 as provided in the Example in the foregoing Section 5.3(b). The School Fiscal Year Basic Building Services Statement reflects Actual Basic Building Services Costs of \$160,000.00 and 62% of that amount is in proportion to the City's Cost Allocation for the fourth School Fiscal Year. Accordingly, the City's Actual Payment is \$102,176.00 so the City must pay an additional \$9,476.00 to the Treasurer which is determined as follows:  $\$9,476.00 = ([\$160,000.00 \times 62\%] + [\$99,200.00 \times 3\%]) - \$92,700.00$ .***

(d) Partial School Fiscal Years. In the event the term of this Agreement expires or this Agreement terminates other than on June 30<sup>th</sup>, for purposes of reconciling the Estimated Payment paid by each Party for such partial School Fiscal Year and the Actual Payment to be paid by such Party for such partial School Fiscal Year, the Actual Basic Building Services Costs used to determine such Actual Payment shall be prorated on a per diem basis for such partial School Fiscal Year.

(e) Cost Allocation. The Parties acknowledge and agree that, commencing July 1, 2005, their intent is to ensure that each Party's contribution to payment of Basic Building Services Costs each School Fiscal Year is in proportion to such Party's use of the Project Improvements during such School Fiscal Year such that each Party is paying no more than the actual cost, to the extent it is reasonably possible to determine such amount and allowing for some reasonable margin of error, of such Party's use of the Project Improvements.

(i) Allocation of Use. Approximately thirty (30) days after the expiration of each School Fiscal Year during the term of this Agreement or as soon thereafter as possible (including, without limitation, those School Fiscal Years occurring prior to July 1, 2005), the School District shall prepare, approve and deliver to the City a statement which summarizes the allocation between the Parties of their exclusive use and scheduled use of the various areas of the Project Improvements and which sets forth the unscheduled use with respect to the preceding School Fiscal Year (collectively, "Statement of Allocation"). The applicable portions or percentages of exclusive use and scheduled use allocated to each Party in each Statement of Allocation with respect to the various areas of the Project Improvements shall be referred to herein as such Party's "Allocation of Use", and each Allocation of Use for each Party shall also include with respect to each Party fifty (50%) percent of all unscheduled use for the applicable School Fiscal Year. Further, the Statement of Allocation shall include, with respect to each Party, a specific Allocation of Use with respect to the Shared Areas ("Shared Areas Allocation") and a reconciliation of any Advances (as defined in Section 5.5(a)(ii) hereof) paid or, if applicable, deducted during the applicable School Fiscal Year based on such Shared Areas Allocation. In connection with preparing the State of Allocation and each Party's Allocation of Use contained therein, input shall be obtained from the Community Center Manager and Asst Superintendent of Operations.

(ii) Utilities. The Parties acknowledge and agree that the various areas of the Project Improvements do not use equal amounts of Utilities. Accordingly, the School District shall, from time to time, cause an engineer, architect or similar professional, licensed within the State of Ohio and reasonably acceptable to the City, to determine a method by which to properly allocate, as accurately as is reasonably possible and economically feasible, the amount of Utilities consumed by the various areas of the Project Improvements (as to any such method of allocation, "Utilities Allocation Formula"). The fee charged by the engineer, architect or similar professional to prepare any such Utilities Allocation Formula shall be shared equally by the Parties. The Parties agree that, initially, the Utilities Allocation Formula to be used with respect to electricity, water and gas consumption by the Project Improvements is attached hereto as Exhibit "G"; provided that, with respect to said Utilities Allocation Formula and any other Utilities Allocation Formula adopted under this Section 5.3(e)(ii), the Parties may, from time to time, mutually agree to alter or replace any such Utilities Allocation Formula with a more accurate Utilities Allocation Formula. Commencing on July 1, 2005 but subject to Section 5.5(a) hereof, each School Fiscal Year, each Party shall be responsible for that portion of the Basic Building Services Costs incurred

in connection with the provision of Utilities to the Project which is in proportion to such Party's Allocation of Use with respect to such School Fiscal Year ("Utilities Allocation").

(iii) Maintenance. Commencing on July 1, 2005 but subject to Section 5.5(a) hereof, each School Fiscal Year, each Party shall be responsible for that portion of the Basic Building Services Costs incurred in connection with Maintenance which is in proportion to such Party's Allocation of Use applicable to the Community Facilities with respect to such School Fiscal Year ("Maintenance Allocation"), provided that a Party's Maintenance Allocation shall also include any Basic Building Services Costs incurred in connection with Maintenance that such Party requested by work order or similar written request during such School Fiscal Year and provided further that the School District's Maintenance Allocation shall exclude all Basic Building Services Costs which the School District is already obligated to pay in accordance with Section 13.2 hereof regarding the Party Wall. The foregoing notwithstanding, until January 1, 2006, the Maintenance Allocation shall not include and the School District shall pay, from its own funds, all Basic Building Services Costs incurred in connection with the repair or replacement (excluding repair and/or replacement required in connection with Casualty or Condemnation) of the structural members (including, without limitation, the roof, weight bearing walls and floors) of the Community Facility (collectively or as to any such repairs or replacement, "Capital Maintenance"); provided that, from January 1, 2006 and through the remainder of the term of this Agreement, each Party shall pay that portion of the Basic Building Services Costs incurred in connection with Capital Maintenance which is in proportion to such Party's average Allocation of Use for the preceding three (3) School Fiscal Years with respect to the particular area of the Community Facility to which such Capital Maintenance is applicable ("Capital Maintenance Allocation"). The foregoing notwithstanding, at no time during the term of this Agreement, shall the Maintenance Allocation or Capital Maintenance Allocation include any Basic Building Services Costs incurred in connection with Maintenance or Capital Maintenance required as a result of the negligence or other misconduct of a Party or such Party's agents, employees or invitees or any participants in events sponsored by such Party in the Community Facility, which Basic Building Services Costs shall be paid by such Party to the Treasurer, for deposit into the Basic Building Services Fund, within ten (10) days of receiving from the Treasurer a bill for such Basic Building Services Costs, together with a written description of the reason such Basic Building Services Costs were incurred.

(iv) Liability Insurance. Commencing on July 1, 2005 but subject to Section 5.5(a) hereof, each School Fiscal Year, each Party shall be responsible for that portion of the Basic Building Services Costs incurred in connection with the procurement and maintenance of Liability Insurance (as defined in Section 9.3(a) hereof) which is in proportion to such Party's Allocation of Use of the Community Facilities with respect to such School Fiscal Year ("Liability Insurance Allocation").

(v) Property Insurance. From time to time, the Parties shall mutually agree on the full replacement cost of each of the following: the Project, Community Center and High School Facilities (as to each such full replacement cost, "Replacement Cost"). Commencing on July 1, 2005 but subject to Section 5.5(a) hereof, each School Fiscal Year, each Party shall be responsible for the Basic Building Services Costs incurred in connection with the procurement and maintenance of the Property Insurance (as defined in Section 9.3(a) hereof) ("Property Insurance Costs") in the amounts determined as follows: (1) first, the Property Insurance Costs shall be allocated between the City and the School District with respect to the Community Center and the High School Facilities as follows (each such allocation referred to herein as "Exclusive Insurance Allocation"): (A) the City's Exclusive Insurance Allocation shall include a sum equal to the product of (I) the total cost of the Property Insurance and (II) a percentage which is based on a fraction, (a) the numerator of which is the Community Center's Replacement Cost and (b) the denominator of which is the Project's Replacement Cost, and (B) the School District's Exclusive Insurance Allocation shall include a sum equal to the product of (I) the total cost of the Property Insurance and (II) a percentage which is based on a fraction, (a) the numerator of which is the High School Facilities' Replacement Cost and (b) the denominator of which is the Project's Replacement Cost, and (2) any Property Insurance Costs which remain, after application thereto of the Exclusive Insurance Allocations determined in the preceding subsection (1), shall be allocated between the Parties based upon their respective Shared Areas Allocations for the applicable School Fiscal Year ("Shared Areas Insurance Allocation") (collectively, the Exclusive Insurance Allocations and Shared Area Insurance Allocations shall be referred to herein as the "Property Insurance Allocations" or, as to either of them, "Property Insurance Allocation").

(vi) Basic Security. Commencing on July 1, 2005 but subject to Section 5.5(a) hereof, each School Fiscal Year, each Party shall be responsible for the Basic Building Services Costs incurred in connection with the provision of Basic Security ("Basic Security Costs") in the amounts determined as follows: (1) first, the Basic Security Costs shall be allocated to the City with respect to the Community Center (such allocation referred to herein as "Exclusive Security Allocation") in an amount equal to the product of (A) the Basic Security Costs and (B) a percentage which is based on a fraction, (I) the numerator of which is the then current square footage within the Community Center and (II) the denominator of which is the then current square footage within the Community Center and the Interior Shared Areas, and (2) any Basic Security Costs which remain, after application thereto of the Exclusive Security Allocation determined in the preceding subsection (1), shall be allocated between the Parties based upon their respective Shared Areas Allocations for the applicable School Fiscal Year ("Shared Areas Security Allocation") (collectively, the Exclusive Security Allocation, as applicable, and Shared Area Security Allocations shall be referred to herein as the "Basic Security Allocations" or, as to either of them, "Basic Security Allocation") (collectively, a Party's Utilities Allocation, Maintenance Allocation, Liability Insurance Allocation, Property Insurance Allocation and Basic Security Allocation and, as applicable, Capital Maintenance Allocation with

respect to any School Fiscal Year shall be referred to herein as such Party's "Cost Allocation" or, as to any of them, "Cost Allocation").

(f) Payments from Community Center Fund. All Payments due from the City under this Section 5.3 shall be paid from the Community Center Fund.

5.4 Fiscal Management. The Basic Building Services Fund shall be fiscally managed and operated by the Treasurer as set forth below:

(a) Books and Records. The Treasurer shall keep separate books and records for the Basic Building Services Fund, which shall be available for review and inspection by the City pursuant to O.R.C. § 149.011, et seq. (the "Public Records Act").

(b) Basic Building Services Budget. On or before October 1st of each School Fiscal Year (including, without limitation, those School Fiscal Years occurring prior to July 1, 2005), the School Board shall prepare, approve and deliver to the City a budget of the estimated Basic Building Services Costs for the then current School Fiscal Year (the "Basic Building Services Budget"). The foregoing notwithstanding, the Parties acknowledge that the Basic Building Services Budget for the first School Fiscal Year (which is a partial School Fiscal Year) of the term of this Agreement has already been delivered to the City. In connection with preparing the Basic Building Services Budget each School Fiscal Year, the Treasurer shall obtain input from and cooperate with the Finance Director (whom the City shall cause to fully cooperate with the Treasurer), though the School Board shall not be bound by any input provided by the Finance Director.

(c) School District Audit. The School District anticipates that, within one hundred eighty (180) days from the date on which each School Fiscal Year (or partial School Fiscal Year, if applicable) expires, the Auditor's Office for the State of Ohio (the "State Auditor") will perform the general audit, mandated by the State of Ohio, of all accounts owned, managed or maintained by the School District and all of the School District's books and records kept in connection therewith, including, without limitation, the books and records of the School District relating to the Basic Building Services Costs and the Basic Building Services Fund (collectively, "School District Audit"), provided that the School District shall not be required to cause the State Auditor to perform any School District Audit. All information relative to the Basic Building Services Costs and Basic Building Services Fund provided to the State Auditor in connection with a School District Audit and all separate reports, correspondence and other written materials, if any, prepared by the State Auditor in connection with such Basic Building Services Costs and the Basic Building Services Fund (collectively, the "Basic Building Services Audit Information") shall be available for review and inspection by the City pursuant to the Public Records Act. The foregoing notwithstanding, the City's failure to inspect any Basic Building Services Audit Information or to require or demand that any School District Audit be performed or that any Basic Building Services Audit Information be provided shall not be a waiver of its right to object to same or to any remedies it may have against the School District in connection with the contents of any School District Audit as it relates to the Basic Building Services Costs and the Basic Building Services Fund or any Basic Building Services Audit Information, provided that the School District Audit, as it relates the Basic Building Services Costs and the Basic Building Services

Fund, and all Basic Building Services Audit Information provided or prepared in connection therewith, for any School Fiscal Year shall be conclusively deemed to be correct and the City shall be deemed to have waived any objections thereto if it fails to object to same, in writing, within twelve (12) months after the expiration of such School Fiscal Year.

(d) School Fiscal Year Basic Building Services Statement. Not later than thirty (30) days after the last day of each School Fiscal Year during the term hereof (including, without limitation, those School Fiscal Years occurring prior to July 1, 2005), the Treasurer shall deliver to each Party a written statement setting forth in detail with respect to such School Fiscal Year (i) the Subsidy Payments or, as the case may be, the Estimated Payments paid by the Parties to the Basic Building Services Fund; (ii) any other payments made by the Parties to the Basic Building Services Fund for such School Fiscal Year (including, without limitation, any payments made under Section 5.5(a) hereof); (iii) the Basic Building Services Costs incurred during such School Fiscal Year; and (iv) the remaining balance in the Basic Building Services Fund and Reserve Fund as of the last day of such School Fiscal Year (collectively, the "School Fiscal Year Basic Building Services Statement"). The City shall have a period of ninety (90) days from the date it receives the School Fiscal Year Basic Building Services Statement within which to review the School District's books and records relating to such School Fiscal Year Basic Building Services Statement, which review shall be performed in accordance with the Public Records Act. The foregoing notwithstanding, the City's failure to perform such a review in any School Fiscal Year shall not be a waiver of its right to object to any future School Fiscal Year Basic Building Services Statement or to any remedies it may have against the School District in connection with the contents of the School Fiscal Year Basic Building Services Statement, or any Basic Building Services Costs, provided that the School Fiscal Year Basic Building Services Statement for any School Fiscal Year shall be conclusively deemed to be correct and the City shall be deemed to have waived any objections thereto if it fails to object to same, in writing, within twelve (12) months after the expiration of such School Fiscal Year.

5.5 Expenditures and Deposits. Deposits into and expenditures from the Basic Building Services Fund shall be as set forth below:

(a) Deficits.

(i) Interim Deficits. If at any time during any School Fiscal Year of the term of this Agreement, there is a deficit in the Basic Building Services Fund such that Basic Building Services Costs, or any of them (including, without limitation, any Uncovered Casualty Expenses or Uncovered Condemnation Expenses) ("Interim Deficit"), cannot be paid as they come due, the Treasurer shall provide each Party with written notice of same, which notice shall include the amount of and reason for the Interim Deficit, and, no earlier than ten (10) business days after providing such written notice, the Treasurer shall deduct such Interim Deficit (1) from the City Reserve Payments which have already been deposited into and remain in the Reserve Fund, an amount equal to the product of such Interim Deficit and the City's Tax Value Percentage (as defined in Section 5.5(a)(i)(2) hereof) and (2) from the School Reserve Payments which have

already been deposited into and remain in the Reserve Fund, an amount equal to the product of such Interim Deficit and the School District's Tax Value Percentage (with respect to the deduction to be taken from either Party's Reserve Payment, "Reserve Deduction").

(1) Reserve Fully Depleted In the event that the Reserve is completely depleted, as provided in and in accordance with Section 5.5(a)(i) hereof or Section 5.5(a)(ii) hereof, each Party shall, within ten (10) days of receiving written notice from the Treasurer of the amount of the applicable Interim Deficit or that part of the Interim Deficit that could not be paid from the Reserve Fund, pay, out of its own funds, that portion of the applicable Interim Deficit or, as the case may be, the remaining portion thereof, which is in proportion to such Party's Tax Value Percentage ("Increase").

(2) Tax Value Percentage Defined. The term "Tax Value Percentage" shall mean (A) with respect to the City, a percentage determined by dividing (I) the total taxable real property values of all real estate within the corporate limits of the City of Mason, as most recently determined by the Warren County, Ohio Auditor by (II) the total taxable real property values of all real estate within the corporate limits of the Mason City School District, as most recently determined by the Warren County, Ohio Auditor, and (B) with respect to the School District, a percentage determined by dividing (I) the total taxable real property values of all real estate within the corporate limits of the Mason City School District, as most recently determined by the Warren County, Ohio Auditor, but excluding the total taxable real property values of all real estate within the corporate limits of the City of Mason, as most recently determined by the Warren County, Ohio Auditor, by (II) the total taxable real property values of all real estate within the corporate limits of the Mason City School District, as most recently determined by the Warren County, Ohio Auditor.

(ii) City Deficit. If at any time after June 30, 2005, the funds in the Community Center Fund are then insufficient to pay a Payment, or any portion thereof, or any City's Increase, or any portion thereof (as to the Payment, City's Increase or applicable portion of either of them that cannot be paid by the Community Center Fund, the "City Deficit"), the City Deficit shall be paid out of the Reserve Fund in accordance with and subject to the preceding Section 5.5(a)(i) hereof. In the event that the Reserve has been completely depleted or is not sufficient to pay the entire City Deficit (the City Deficit or remaining portion thereof being referred to herein as "Uncovered Deficit"), the Treasurer shall provide each Party with written notice of the Uncovered Deficit; and within ten (10) days of receiving such notice, (1) the City shall pay, out of its own funds, and deliver to the Treasurer for deposit into the Basic Building Services Fund, the City's Tax Value Percentage of the Uncovered Deficit ("City's City Deficit Advance" or, if more than one, "City's City Deficit Advances"); and (2) the School District shall pay, out of its own funds, and deliver to the Treasurer for



deposit into the Basic Building Services Fund, the School District's Tax Value Percentage of the Uncovered Deficit ("School's City Deficit Advance" or, if more than one, "School's City Deficit Advances") (collectively, City's City Deficit Advances and School's City Deficit Advances shall be referred to herein as "City Deficit Advances" or, as to any one of them, "City Deficit Advance") (collectively, Reserve Deductions, Increases and City Deficit Advances shall be referred to herein as "Advances" or, as to any of them, "Advance").

(b) Expenditures from the Basic Building Services Fund. The Basic Building Services Fund shall be used only for the payment of Basic Building Services Costs and only for payment of costs specifically authorized by this Agreement and for no other purpose absent a mutual written agreement by the Parties.

(c) Excess Funding. In each School Fiscal Year in which the Basic Building Services Budget for that School Fiscal Year reflects Basic Building Services Costs which are less than the sum of (i) the Subsidy Payments or, as the case may be, Payments to be received for that School Fiscal Year and (ii) the beginning balance of the Basic Building Services Fund, as reflected by the applicable School Fiscal Year Basic Building Services Statement for the preceding School Fiscal Year, the excess shall be retained in the Basic Building Services Fund and carried over to the next School Fiscal Year to defray the Basic Building Services Costs for subsequent School Fiscal Years (subject to any reimbursement which may be owed to either Party under Sections 5.3(c) hereof in connection with any reconciliation required under such Section).

(d) High School Facilities. Except as otherwise provided in this Agreement or in the Easement Agreement, all costs and expenses incurred by the School District in connection with the maintenance and operation of the High School Facilities shall be paid out of the School District's own funds and not from the Basic Building Services Fund.

5.6 Example. The Parties have jointly prepared a summary example of the payments and deposits to be paid in accordance with Sections 5.2, 5.3 and 5.5 hereof, which summary example is attached hereto as Exhibit "H". The foregoing notwithstanding, in the event that such summary example is inconsistent with the terms and conditions of the Sections 5.2, 5.3 and/or 5.5 hereof, the terms and conditions of such Sections shall control.

## **ARTICLE VI FUNDING OF COMMUNITY CENTER SERVICES**

6.1 Community Center Fund. Each of the Parties hereby agrees to the funding obligations set forth in this Article VI with respect to the Community Center Services. The Community Center Fund shall be established, maintained and operated as set forth in this Article VI.

6.2 Location of Community Center Fund. The City shall not be required to establish a separate monetary account for purposes of establishing and maintaining the Community Center Fund. Rather, the monies comprising the Community Center Fund may be kept with the City's general funds (the "General City Account"), provided that the City maintains and establishes a separate department within the General City Account with respect to the Community Center

Fund and the Community Center Fund appears as a separate line item within the General City Account. The Community Center Fund and the monies comprising the Community Center Fund shall be maintained and managed by the City in accordance with its investment policy adopted pursuant to Chapter 135 of the Ohio Revised Code.

6.3 Management of Community Center Fund. The Community Center Fund and the monies comprising the Community Center Fund shall be fiscally maintained and managed by the City in accordance with all applicable laws and the Charter of the City (the "City Charter"). Pursuant to the City Charter, all funds of the City, except funds comprised of bond issues, agency funds and enterprise funds must be used pursuant to a budget, which is to be prepared and adopted annually by the City (the "Annual Budget"). Financial reports, which compare actual expenditures and deposits with the Annual Budget are prepared monthly and presented to City Council so that City Council may review the financial status and measure the effectiveness of budgetary controls (collectively or as to any of them, "Monthly Financial Reports"). Further, the City employs an informal budgetary monitoring system over proposed purchases through the use of monthly computerized print outs which detail current actual expenditures versus the expenditures that appear on the Annual Budget by line item (collectively or as to any of them, "Monthly Computerized Reports") (collectively or as to any of them, Monthly Financial Reports and Monthly Computerized Reports shall be referred to herein as "Monthly Reports"). Pursuant to the Public Records Act, all Monthly Reports shall be available for review and inspection by the School District.

6.4 Two Year Projection Statement. In addition to the Annual Budget, on or before October 1st of each Contract Year (including, without limitation, those Contract Years occurring prior to July 1, 2005), the City shall prepare, approve and deliver to the School District a financial projection for at least the two (2) consecutive Contract Years following such Contract Year (such two (2) consecutive Contract Year or other longer covered time period, "Covered Time Period"), which financial projection shall include a reasonable projection of (1) the Community Center Expenses which will be incurred during the Covered Time Period, (2) the Subsidy Payments or, as the case may be, the Payments to be paid from the Community Center Fund for such Covered Time Period (using, at minimum, the most recent Basic Building Services Budget, School Fiscal Year Basic Building Services Statement and Statement of Allocation as a basis for such determination), and (3) the Community Facility Revenue for such Covered Time Period (collectively, "Two Year Projection Statement"). In the event that any Two Year Projection Statement reasonably indicates that Community Facility Revenue for the applicable Covered Time Period will be insufficient to pay the Community Center Expenses and Payments to be paid (or which would be required to be paid had the period commencing on the Commencement Date and expiring on June 30, 2005 already expired) during such Covered Time Period, such Two Year Projection Statement shall include a written notice to the School District of same ("Deficiency Notice") and shall include a written explanation of those reasonable measures the City intends to take or to implement in order to eliminate such deficiency (which shall include, without limitation, an increase in the Fees charged for such Covered Time Period at least in the amount referenced in Section 6.7(c) hereof) ("City's Measures"), which City's Measures shall be implemented as promptly as is reasonably possible. In the event that, after implementing the City's Measures, the City is unable to eliminate such deficiency or reasonably believes that it will be unable to do so, it shall, as promptly as is reasonably possible, provide the School District with written notice of same ("Second Deficiency Notice"), and the School District shall, within a reasonable time after receiving the Second Deficiency Notice, provide the

City with a reasonable, written recommendation for the elimination of such deficiency ("School District's Recommendation"). The foregoing notwithstanding, the Parties acknowledge that the first Two Year Projection Statement shall cover the time period commencing on the Commencement Date and expiring on December 31, 2004 and shall be delivered to the School District within thirty (30) days of the Commencement Date.

6.5 Community Center Fund Statement. Not later than thirty (30) days after the last day of each Contract Year during the term hereof, the City shall deliver to each Party a written statement setting forth in detail all of the deposits into and expenditures (including, without limitation, all Community Center Expenses incurred during such Contract Year) from the Community Center Fund (the "Community Center Fund Statement"). The School District shall have a period of ninety (90) days from the date it receives the Community Center Fund Statement within which to review the City's books and records relating to such Community Center Fund Statement, which review shall be performed in accordance with the Public Records Act. The foregoing notwithstanding, the School District's failure to perform such a review in any Contract Year shall not be a waiver of its right to object to any future Community Center Fund Statement or to any remedies it may have against the City in connection with the contents of the Community Center Fund Statement, or any Community Center Expenses, provided that the Community Center Fund Statement for any Contract Year shall be conclusively deemed to be correct and the School District shall be deemed to have waived any objections thereto if it fails to object to same, in writing, within twelve (12) months after the expiration of such Contract Year.

6.6 Books and Records. The City shall keep separate accounts and records for the Community Center Fund, which shall be available for review by the School District pursuant to the Public Records Act.

6.7 Source of Funds. The City shall collect the following fees and revenues in connection with the use of the Community Facility and the activities and programs conducted therein:

(a) Use Fees. The City shall establish and collect user fees from all persons using the Community Facility (collectively "Use Fees" or, individually, "Use Fee"), except as otherwise provided in this Section 6.7(a), it being the understanding and intention of the Parties that the City shall not charge and collect Use Fees or any other fee from any individuals (or spectators) participating in School District sponsored activities. The Parties acknowledge that not all residents of the School District reside in the City, but that for purposes of this Agreement, the City shall not charge and collect from the School District residents a Use Fee which is different from the Use Fee paid by residents of the City, it being agreed that the structure of the Use Fee applicable to the residents of the City shall apply equally to all residents of the School District. All Use Fees shall be deposited into the Community Center Fund promptly upon receipt by the City.

(b) Other Fees. The City shall also establish the fees to be charged for use of the Community Facility for fund-raising events and other events and programs sponsored by the City, School District (provided that the City shall not charge and collect such fees to any individuals (or spectators) participating in School District sponsored activities), Community Center or third parties (collectively, "Event Fees" or, individually, "Event Fee") (collectively, Use Fees and Event Fees shall be referred to herein as "Fees" or, individually, "Fee").

(c) Establishment of Fees. In establishing the amount of each Fee to be charged from time to time, the City shall set the Fees at amounts that are reasonable to cover Community Center Expenses but also at amounts that are competitive with fees charged for comparable services in the City of Mason/Greater Cincinnati area. The foregoing notwithstanding, the City shall be required, under the circumstances described in this Section 6.7(c), to increase the Use Fees in the following amounts: (i) with respect each resident of the City and the School District who purchases an annual family membership in the Community Facility, a minimum of Fifty and 00/100 Dollars (\$50.00) with respect to each such annual family membership ("50 Increase") and (ii) with respect to all users who purchase any type of membership, a minimum increase that is in proportion to the 50 Increase with respect to each such membership ("Other Increase") (collectively, the 50 Increase and Other Increase shall be referred to herein as "Fee Increases"). The Fee Increases shall only be required with respect to (i) each Contract Year, occurring before June 30, 2005, in which, based on the Statements of Allocation applicable to such Contract Year, either Party's Subsidy Payments applicable to such Contract Year (understanding that Subsidy Payments are paid with respect to School Fiscal Years so that one-half (1/2) of a Subsidy Payment paid for one School Fiscal Year is applicable to the Contract Year in which such School Fiscal Year commences and one-half (1/2) of the Subsidy Payment paid for the next School Fiscal Year is applicable to that same Contract Year) exceeded that portion of the Basic Building Services Costs allocated to such Party in accordance with such Party's Cost Allocation as set forth in such Statements of Allocation and (ii) each Contract Year in which the Annual Budget or Two Year Projection Statement applicable thereto reflects that the projected Community Center Revenue will not be sufficient to pay the amounts required to be paid from the Community Center Fund under Section 5.3 hereof.

(d) No Profit Sharing Fees. Notwithstanding the foregoing, all profits earned from events sponsored by the School District or by any non-profit, recreational or charitable group ("Non-Profit Group") or by the City as agent for a Non-Profit Group (so long as all profits earned are retained by the Non-Profit Group and not the City) shall be the sole property of the party sponsoring the particular event or, if the City is the sponsor of a Non-Profit Group, of the Non-Profit Group and shall not be subject to any profit sharing type Fees.

(e) Revenues. Subject to the foregoing subpart (d) and Section 6.9 hereof, all Fees and revenues and profits earned or realized by the Community Center in connection with programs or events at the Community Facility (collectively, "Community Center Revenue") shall be deposited into the Community Center Fund.

6.8 Expenditures from Community Center Fund. The Community Center Fund shall be used only for payment of the Community Center Expenses, the City's Payments and other payments, amounts and costs required or permitted to be paid from the Community Center Fund under this Agreement and for no other purpose absent a mutual written agreement between the Parties.

6.9 Excess Funding. In each Contract Year in which the Community Center Revenue collected by the City exceeds the expenditures made from the Community Center Fund for such Contract Year, as reflected by the Monthly Reports and Community Center Fund Statement applicable to such Contract Year, provided that there are sufficient funds within the Community

Center Fund to meet and satisfy any Initial Estimated Payments (and, to the extent applicable, Adjusted Estimated Payments) that will be due for the next ensuing Contract Year and all Community Center Expenses that will be incurred under the Annual Budget for the next ensuing Contract Year and the Two Year Projection Statement applicable to the next ensuing Contract Year, such excess funding ("Excess Funding") shall be distributed (a) first, to reimburse the Reserve Fund for any Reserve Deductions taken from any Reserve Payments deposited into the Reserve Fund, by restoring the Parties' respective Reserve Payments contained within the Reserve Fund in proportion to the Parties' respective then outstanding and unreimbursed Reserve Deductions on a first deducted, first paid basis (as to any such restoration, "Reserve Restorations") and (b) second, to reimburse the Parties in proportion to the Parties' respective then outstanding and unreimbursed Advances on a first advanced, first paid basis (as to any such reimbursement, "Reimbursement"). All Reserve Restorations shall be deposited into the Reserve Fund and shall only be used for the purposes permitted under Sections 5.5(a)(i) and (ii) hereof. Any Reimbursement owed to the Parties shall be paid to the Basic Building Services Fund, and the Parties shall then receive from the Basic Building Services Fund payments equal to their respective Reimbursements.

6.10 Deficits. If at any time during the term of this Agreement, the balance of the Community Center Fund is insufficient to pay for any Community Center Expenses required or authorized to be paid by this Agreement ("Community Center Fund Deficiency"), then, and in that event, the City shall be required to deposit, from the City's own funds, into the Community Center Fund an amount equal to the Community Center Fund Deficiency, subject to Section 5.5(a)(i) and (ii) hereof.

## **ARTICLE VII TERM, TERMINATION, DEFAULT AND REMEDIES**

7.1 Term of Agreement. The initial term of this Agreement shall commence on the Commencement Date and shall terminate on the earlier of (a) the last day of the twentieth (20) Contract Year after the Commencement Date or (b) the day on which the Initial Term (as defined by the Ground Lease) ends by expiration of time and not by earlier termination (except as otherwise provided in this Agreement or the Ground Lease); provided that if the Commencement Date is other than January 1st of a Contract Year, such initial term of this Agreement shall be extended by a period of time equal to the balance of such partial Contract Year but subject to subpart (b) of this sentence. This Agreement shall automatically be renewed for three (3) additional consecutive terms of twenty (20) Contract Years and one (1) additional consecutive term of nineteen (19) Contract Years, unless, not less than one hundred eighty (180) days prior to the end of the initial or any subsequent term, a Party desiring to terminate this Agreement provides written notice to the other Party of its intent to terminate, in which event this Agreement shall terminate at the expiration of the last Contract Year of the initial term or subsequent term, as the case may be.

7.2 Termination. In the event that this Agreement is terminated pursuant to Section 7.1 above or for any reason specifically permitted under this Agreement, other than termination in connection with the City's default in accordance with Section 7.4 hereof, notwithstanding anything herein to the contrary (but subject to Section 7.4 hereof), the following shall be applicable:

- (a) Remaining Rights and Obligations.

(i) Unilateral Termination. If the City has terminated this Agreement pursuant to Section 7.1 hereof, the School District shall, under the Ground Lease and, as applicable, the Easement Agreement, (1) have the right and obligation to continue to lease, operate, use and maintain the High School Facilities and that portion of the Land on which the High School Facilities are located, (2) have the right, but not the obligation, to continue to lease, operate, use and maintain the Community Facilities, and that portion of the Land on which the Community Facilities are located, (3) have the right to continue to lease, operate and use those portions of the Perimeter Road and Additional Facilities located on the Land, (4) have the right to continue to lease, operate, use and maintain the balance of the Land including, without limitation, any improvements thereon, and (5) have the right to use the Perimeter Road and Additional Facilities located on the Contiguous Parcel without the joint participation of the City, and the Sublease, and all of the City's rights and obligations thereunder, shall terminate; provided that if the School District has terminated this Agreement pursuant to Section 7.1 hereof, the School District shall, under the Ground Lease and, as applicable, the Easement Agreement, (1) have the right and obligation to continue to lease, operate, use and maintain the High School Facilities and that portion of the Land on which the High School Facilities are located and the Shared Areas (less the Gymnasium, as provided below), (2) have the right to continue to lease, operate and use those portions of the Perimeter Road and Additional Facilities located on the Land (3) have the right to continue to lease, operate, use and maintain any other improvements constructed on the Land by or on behalf of School District (other than the Community Center and Gymnasium) and that portion of the Land on which such improvements are located, and (4) have the right to continue to use those portions of the Perimeter Road and the Additional Facilities located on the Contiguous Parcel, but the School District's rights and obligations in connection with the lease, use, operation and maintenance of the Gymnasium and the remainder of the Project under the Ground Lease and this Agreement shall terminate.

(ii) Casualty or Condemnation Termination. In the event that this Agreement is terminated in accordance with Sections 9.4 or 9.6 of this Agreement, the School District shall, under the Ground Lease and, as applicable, the Easement Agreement, (1) have the right and obligation to continue to lease, operate, use and maintain the High School Facilities and that portion of the Land on which the High School Facilities are located, (2) have the right to continue to lease, operate and use those portions of the Perimeter Road and Additional Facilities located on the Land, (3) have the right to continue to lease, operate, use and maintain any other improvements constructed on the Land by or on behalf of School District (other than the Community Facilities) and that portion of the Land on which such improvements are located and (4) have the right to continue to use those portions of the Perimeter Road and Additional Facilities located on the Contiguous Parcel, but the School District's rights and obligations in connection with the lease, use, operation and maintenance of the remainder of the Project under the Ground Lease and this Agreement shall terminate. The foregoing notwithstanding, the School District shall have the right, for a period of one hundred eighty (180) days from the date on which the termination of this

Agreement is effective, to terminate the Ground Lease and, in which event, the School District's rights and obligations with respect to the remainder of the Project (including, without limitation, the High School Facilities) shall terminate.

(b) Basic Building Services Fund, Community Center Fund and Reserve Fund. In the event that this Agreement is terminated, other than a termination in accordance with Section 7.4 hereof, after payment of all Basic Building Services Costs and Community Center Expenses which are due or which will be due with respect to time periods prior to the date such termination is effective, all remaining monies in the Basic Building Services Fund, Community Center Fund and Reserve Fund shall be distributed to the Party that will be the fee owner of the Community Facility under the Ground Lease after such termination is effective; provided that if the City will be the fee owner of the Community Center and Gymnasium under the Ground Lease and the School District will be the fee owner of the balance of the Shared Areas under the Ground Lease after such termination is effective, (i) the remaining monies in the Basic Building Services Fund shall be distributed to each Party in proportion to that part of the Subsidy Payments or, as the case may be, Payments contributed by such Party to the Basic Building Services Fund in the School Fiscal Year in which this Agreement terminates; (ii) the remaining monies in the Reserve Fund shall be distributed to each Party in proportion to that part of the Reserve Payments contributed by such Party to the Reserve Fund; and (iii) the remaining monies in the Community Center Fund shall be distributed to the City. The foregoing notwithstanding, if any Advances are then outstanding and unpaid, the Parties shall be reimbursed in proportion to the Parties' respective then outstanding and unreimbursed Advances, on a first advanced, first paid basis, first from the Reserve Fund and, if the Reserve Fund has been completely depleted, from the Community Center Fund. After payment of all Community Center Expenses which are due or which will be due with respect to time periods prior to the date such termination is effective, if the School District will be retaining fee ownership of the Community Center under the Ground Lease after such termination is effective, within thirty (30) days of the date on which such termination is effective the City shall, in accordance with applicable law, (1) provide each member of the Community Center with written notice of such termination and the opportunity to terminate such member's membership in the Community Center, (2) provide written notice of such termination to each person or entity who has an event scheduled to occur within the Community Center after such termination and the opportunity to cancel such event, and (3) within ninety (90) days from the date of such notice, return a prorated portion of any Use Fees (based upon the number of days remaining in the period of membership applicable to such Use Fees after termination of the applicable memberships) to members who cancel their membership and any Fees to persons or entities who cancel such events in response to such notices. Thereafter, the Community Center Fund shall be transferred to the School District after expiration of the foregoing ninety (90) day period, less any Fees returned in accordance with the preceding sentence.

(c) Equipment. The Equipment and New Equipment shall be retained by the Party that is the fee owner of the Community Center under the Ground Lease after the applicable termination is effective in accordance with the Ground Lease, provided that the Unapproved Equipment (as defined by Section 8.2 hereof) shall returned to the Party who purchased such Unapproved Equipment pursuant to Section 8.2 of this Agreement.

7.3 Default of the Parties. In the event of a default by a Party (the "Defaulting Party") in performing any of the monetary or non-monetary obligations imposed hereunder, the non-defaulting Party (the "Non-Defaulting Party") shall give written notice to the Defaulting Party specifying the nature of the default and shall permit the Defaulting Party the opportunity to cure such default, pursuant to Section 7.3(a) or (b) below, as the case may be, before the Non-Defaulting Party shall be entitled to exercise any of the remedies described under Section 7.4(a) or (b) hereof, as the case may be.

(a) Non-Monetary Default. In the event of non-monetary default, the Defaulting Party shall have sixty (60) days after receipt of the written notice of default to cure said non-monetary default (or such shorter period of time as is reasonably necessary under the circumstances in order to eliminate an unreasonable risk of material harm to persons or property or to stop already occurring material harm to persons or property or such longer period of time as is reasonably necessary to diligently pursue and complete said cure provided that the Defaulting Party commences such cure within said sixty (60) day period and thereafter diligently proceeds to completion of same and while doing so shall continue to perform all of its monetary obligations hereunder).

(b) Monetary Default. In the event of a monetary default, the Defaulting Party and the Non-Defaulting Party shall agree upon a re-payment schedule (the "Re-Payment Schedule"), and the Defaulting Party shall make payments in accordance with the Re-Payment Schedule until such time as the monetary default is cured. Thereafter, if the Defaulting Party fails to make payments in accordance with the Re-Payment Schedule for a period of sixty (60) days, then the Non-Defaulting Party may exercise the remedies described under Section 7.4(a) or (b) hereof, as the case may be.

7.4 Remedies for Default. The following remedies may be exercised only if the Defaulting Party has been provided the written notice required under Section 7.3 hereof and has been afforded the opportunity to cure the applicable default pursuant to Section 7.3(a) or (b) hereof, as the case may be.

(a) City's Remedies. If the School District is the Defaulting Party, then the City may exercise the following remedies while the applicable default is continuing or remains uncured.

(i) to commence an action for specific performance or, if applicable, for injunctive or other equitable relief against the School District and to recover in such proceeding any and all reasonable attorney fees and/or court costs incurred by the City in connection with enforcing the City's remedies under this Section 7.4(a)(i) against the School District; and/or

(ii) to recover damages (including, without limitation, any costs and expenses which may have been incurred by and unreimbursed to the City under Section 7.4(a)(iii) hereof) suffered or incurred by the City as a result of such default by the School District and any and all reasonable attorney fees and/or court costs and/or Binding Arbitration (as defined in Section 7.5(d)(i) hereof) costs incurred by the City in connection with enforcing the City's remedies under this Section 7.4(a)(ii) in accordance with Section 7.5 hereof; and/or



(iii) to itself perform, or cause to be performed, the covenant, performance or condition required to be kept, observed or performed by the School District and which is the subject of the default by the School District; in which event the School District shall reimburse the City, within thirty (30) days after a written notice requesting same, for the City's reasonable costs and expenses actually incurred in doing so.

Notwithstanding any provisions of this Agreement or of applicable law or equity to the contrary, the foregoing remedies shall be the sole remedies available to the City in the event the School District commits a default under this Agreement, the City having no right to terminate this Agreement in the event of any such default. Further, any damages and/or costs and expenses (including, without limitation, the reasonable attorney's fees and court and Binding Arbitration costs referenced in subparts (i) and (ii) above) which the City is entitled to recover from the School District under this Section 7.4(a) shall accrue interest at the rate of twelve (12%) percent per annum until the date such damages and/or costs and expenses, as the case may be, are paid to the City by the School District.

(b) School District's Remedies. If the City is the Defaulting Party, then the School District may exercise the following remedies while the applicable default is continuing or remains uncured.

(i) to commence an action for specific performance or, if applicable, for injunctive or other equitable relief against the City and to recover in such proceeding any and all reasonable attorney fees and/or court costs incurred by the School District in connection with enforcing the School District's remedies under this Section 7.4(b)(i) against the City; and/or

(ii) to recover damages (including, without limitation, any costs and expenses which may have been incurred by and unreimbursed to the School District under Section 7.4(b)(iii) hereof) suffered or incurred by the School District as a result of such default by the City and any and all reasonable attorney fees and/or court costs and/or Binding Arbitration costs incurred by the School District in connection with enforcing the School District's remedies under this Section 7.4(b)(ii) in accordance with Section 7.5 hereof; and/or

(iii) to itself perform, or cause to be performed, the covenant, performance or condition required to be kept, observed or performed by the City and which is the subject of the default by the City; in which event the City shall reimburse the School District, within thirty (30) days after a written notice requesting same, for the School District's reasonable costs and expenses actually incurred in doing so; and/or

(iv) to terminate this Agreement by written notice thereof to the City.

Notwithstanding any provisions of this Agreement or of applicable law or equity to the contrary, the foregoing remedies shall be the sole remedies available to the School District in the event that the City commits a default under this Agreement. Further, any damages and/or costs and expenses (including, without limitation, the reasonable attorney's fees and court and Binding Arbitration costs referenced in subparts (i) and (ii) above) which the School District is entitled to

recover from the City under this Section 7.4(b) shall accrue interest at the rate of twelve (12%) percent per annum until the date such damages and/or costs and expenses, as the case may be, are paid to the School District by the City.

(c) Termination for Default Committed by City. In the event of termination of this Agreement pursuant to the above Section 7.4(b)(iv), the School District shall be relieved of all further obligations hereunder (except as set forth in Section 7.4(c)(i) hereof) accruing after the date of termination, but the City shall not be relieved of its obligations under this Agreement accruing prior to the date of termination.

(i) Effect of Termination of Rights and Obligations. Notwithstanding anything contained herein to the contrary, in the event that this Agreement is terminated pursuant to this Section 7.4, the Parties hereby agree that (1) the Ground Lease shall remain in full force and effect, it being the understanding and intention of the parties that the School District shall, under the Ground Lease and, as applicable, the Easement Agreement, (A) have the right and obligation to continue to lease, operate, use and maintain the High School Facilities and that that portion of the Land on which the High School Facilities are located, (B) have the right, but not the obligation, to lease, operate, use and maintain the Community Facilities and that portion of the Land on which the Community Facilities are located, (C) have the right to lease, operate, use and maintain those portions of the Perimeter Road and Additional Facilities located on the Land and (D) have the right to use those portions of the Perimeter Road and Additional Facilities located on the Contiguous Parcel without the City's joint participation hereunder; and (2) the Sublease shall terminate, the City not having further right to use the Community Facilities or that portion of the Land on which the Community Facilities are located (including, without limitation, the Community Center) or that portion of the Perimeter Road located on the Land.

(ii) Basic Building Services Fund, Community Center Fund and Reserve Fund. In the event of termination of this Agreement pursuant to this Section 7.4, after payment of all Basic Building Services Costs and Community Center Expenses which are due or which will be due with respect to time periods prior to the date such termination is effective, ownership, management and operation of the Basic Building Services Fund, Community Center Fund and Reserve Fund shall automatically be transferred to the School District, the City having no further rights thereto or any right to be reimbursed for any of the City's Advances or Reserve Deductions then outstanding and unreimbursed; provided that, within thirty (30) days of the date on which such termination is effective the City shall, in accordance with applicable law, (1) provide each member of the Community Center with written notice of such termination and the opportunity to terminate such member's membership in the Community Center, (2) provide written notice of such termination to each person or entity who has an event scheduled to occur within the Community Center after such termination and the opportunity to cancel such event, and (3) within thirty (30) days from the date of such notice, return a prorated portion of any Use Fees (based upon the number of days remaining in the period of membership applicable to such Use Fees after termination of the applicable memberships) to members who cancel their

membership and any Fees to persons or entities who cancel such events in response to such notices. Thereafter, the Community Center Fund shall be transferred to the School District after expiration of the foregoing thirty (30) day period, less any Fees returned in accordance with the preceding sentence.

## 7.5 Dispute Resolution.

(a) City Manager and Superintendent. In the event that a dispute arises between the Parties in connection with this Agreement or the Parties' use and operation of the Project (as to any such dispute, "Dispute") and the Community Center Manager and Asst Superintendent of Operations have been unable to resolve such Dispute within a reasonable time, before either Party shall submit the resolution of such Dispute to City Council and the School Board, or for Mediation (as defined in Section 7.5(c) hereof) or for Binding Arbitration, such Dispute shall be submitted first to the City Manager and the Superintendent as the initial arbiters of such Dispute; provided that if the Dispute is based upon scheduling, such Dispute shall be submitted to the Advisory Committee in accordance with Section 10.2 hereof before seeking resolution of such Dispute in accordance with Sections 7.5(b), 7.5(c) or 7.5(d) hereof.

(i) Resolution Request. Either Party ("Requesting Party") desiring resolution of a particular Dispute shall submit a written request to the City Manager and the Superintendent (1) requesting resolution of the Dispute, (2) describing in detail the nature of the Dispute, (3) describing what efforts have been made by the Parties to resolve the Dispute and (4) setting forth what resolution the Requesting Party desires (collectively, "Resolution Request"). A copy of the Resolution Request shall also be provided by the Requesting Party to the other Party at the same time that it is provided to the City Manager and the Superintendent.

(ii) City Manager and Superintendent Recommendations. Each Resolution Request, together with any supporting material submitted by either Party in connection therewith, shall be, in good faith, jointly reviewed and considered by the City Manager and the Superintendent within thirty (30) days after the Resolution Request has been delivered as provided in the preceding subpart (i) (the "Review Period"); provided that if the City Manager and the Superintendent are unable to agree upon the recommendations to be made with respect to the particular Resolution Request or fail to provide the Requesting Party and the other Party with written notice of recommendations, agreeable to and signed by both the City Manager and the Superintendent, with respect to such Resolution Request within ten (10) business days after the Review Period expires, the Requesting Party and/or the other Party shall then have the right to seek resolution of the applicable Dispute with City Council and the School Board in accordance with Section 7.5(b) hereof.

(iii) Binding Effect of Recommendations. The foregoing notwithstanding, no recommendations made by the City Manager and the Superintendent shall be binding upon either Party unless City Council and the School Board each vote to approve the applicable recommendations. Accordingly, unless recommendations made by the City Manager and the Superintendent under

the foregoing subpart (ii) are approved by City Council and the School Board and provided that the applicable Dispute has first been submitted to the City Manager and the Superintendent in accordance with the preceding subpart (ii), either Party may elect to pursue resolution of the applicable Dispute with City Council and the School Board in accordance with Section 7.5(b) hereof.

(iv) Equitable Relief. Notwithstanding anything herein to the contrary, nothing in this Section 7.5(a) shall limit or otherwise prohibit either Party from the right to first pursue the remedies specifically described under the foregoing Section 7.4(a)(i) and/or (iii) or Section 7.4(b)(i), (iii) and/or (iv), as the case may be, and the exercise of any such remedies shall not be deemed an election of remedies.

(b) City Council and School Board. In the event that a Dispute is not resolved in accordance with Section 7.5(a) hereof or, if applicable, Section 10.2 hereof or either Party disagrees with the recommendations made under Section 7.5(a) hereof or, if applicable, Section 10.2 hereof, such Party shall have the right take the Resolution Request or, if applicable Scheduling Resolution Request (as defined in Section 10.2(a) hereof) to City Council and the School Board for resolution and must do so before seeking resolution of the applicable Dispute via Mediation or Binding Arbitration.

(i) Procedure. Either Party desiring resolution of a particular Dispute under this Section 7.5(b) shall submit a copy of the Resolution Request or, if applicable, Scheduling Resolution Request previously submitted under Section 7.5(a) hereof or, if applicable, Section 10.2 hereof together with a written request to resolve the Dispute presented by the Resolution Request or, if applicable, Scheduling Resolution Request and the resolution desired by such Party (collectively, "Second Resolution Request"). A copy of the Second Resolution Request shall also be provided to the other Party at the same time that it is provided to City Council and the School Board.

(ii) City Council and School Board Recommendations. Each Second Resolution Request, together with any supporting material submitted by either Party in connection therewith, shall be, in good faith, reviewed and considered by City Council and the School Board at their next regularly scheduled meeting. In the event that City Council and the School Board are unable to mutually agree upon resolution of the applicable dispute within forty-five (45) days from the date the Second Resolution Request was submitted, either Party may then seek resolution of the applicable Dispute via Mediation or Binding Arbitration.

(iii) Equitable Relief. Notwithstanding anything herein to the contrary, nothing in this Section 7.5(b) shall limit or otherwise prohibit either Party from the right to first pursue the remedies specifically described under the foregoing Section 7.4(a)(i) and/or (iii) or Section 7.4(b)(i), (iii) and/or (iv), as the case may be, and the exercise of any such remedies shall not be deemed an election of remedies.

(c) Mediation. In the event that the Parties are unable to resolve a particular Dispute in accordance with Sections 7.5(a), 7.5(b) or, if applicable, 10.2, the Parties may

mutually agree to retain the services of a mediator to resolve the particular Dispute ("Mediation").

(d) Binding Arbitration.

(i) Arbitration Required. The Parties mutually agree that, subject to Sections 7.5(a), 7.5(b), 7.5(c) and 10.2 hereof, all Disputes (which shall include, without limitation, all claims and controversies between the Parties, whether individual, joint, or class in nature, arising from this Agreement or the Ground Lease, Sublease or Easement or otherwise related to this Agreement, including without limitation contract disputes and tort claims) shall be resolved by binding arbitration pursuant to the Commercial Rules of the American Arbitration Association (collectively, "Binding Arbitration"), provided that the Parties shall not be required to select arbitrators through the American Arbitration Association or pay the filing fees required by the American Arbitration Association. Notwithstanding anything herein to the contrary, this Section shall not limit or otherwise prohibit either Party from the right to pursue the other remedies specifically described under Section 7.4(a)(i) and/or (iii) or Section 7.4(b)(i), (iii) and/or (iv), as the case may be, and the exercise of any such remedies shall not be deemed an election of remedies. Further, any Disputes concerning the lawfulness or reasonableness of any act, or exercise of any right or remedy under this Agreement, including any claim to rescind, reform, or otherwise modify any portion of this Agreement, shall also be resolved pursuant to Binding Arbitration; provided, however that no arbitrator shall have the right or the power to enjoin or restrain any act of either Party or otherwise award either Party any equitable relief. Judgment upon any award rendered in accordance with this Section 7.5(d) may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a Party shall be applicable in any Binding Arbitration proceeding, and the commencement of a Binding Arbitration proceeding in accordance with Section 7.5(d)(ii) hereof shall be deemed the commencement of any action for these purposes. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this Section 7.5(d).

(ii) Selection of Arbitrators. Provided that the terms and conditions of Sections 7.5(a), 7.5(b), 7.5(c) and 10.2 hereof have been satisfied, within thirty (30) days (the "Selection Period") after a Party ("Arbitration Requester") provides the other Party ("Opposing Party") with written notice that the Arbitration Requester desires to submit a Dispute to Binding Arbitration, the Arbitration Requester and Opposing Party shall attempt to agree upon an arbitrator to whom to submit the applicable Dispute for Binding Arbitration. If the Parties are unable to agree upon an arbitrator within the Selection Period, then, at the end of the Selection Period, each Party shall select an arbitrator from the seven (7) county (Warren County, Butler County, Hamilton County and Clermont County, Ohio

and Campbell County, Kenton County and Boone County, Kentucky) Greater Cincinnati Area ("Cincinnati Area"), and within fifteen (15) days after the end of the Selection Period ("Second Selection Period"), the arbitrators shall agree upon an arbitrator from the Greater Cincinnati Area. If such arbitrators are unable to agree upon an arbitrator within ten (10) days after the end of the Second Selection Period, an arbitrator shall be selected by the American Arbitration Association. Upon selection of the third arbitrator, the Dispute shall be submitted for resolution to all three (3) arbitrators; and based upon pre-arbitration hearing position statements filed by the Parties with such arbitrators, the arbitrators shall determine, within sixty (60) days of selection of the last arbitrator, in writing which Party has lost the arbitration. The losing Party shall pay all fees and expenses of the arbitrators.

## ARTICLE VIII COMMUNITY CENTER SERVICES

8.1 Alterations and Improvements. All alterations and improvements to the Community Facilities and Perimeter Road (except those to the Party Wall, which shall be subject to Article XIII hereof) shall be subject to the mutual agreement of the Parties, subject to the terms and conditions set forth below.

(a) Community Facilities and Roads on Land.

(i) Mandatory Alterations or Improvements. If an alteration or improvement to the Community Facilities or that portion of the Perimeter Road located on the Land is reasonably necessary (1) to protect the health and safety of the users of same, or (2) to comply with applicable local, state or federal laws, rules or regulations, then such alteration or improvement shall be deemed accepted and approved by the Parties, and expenditures from the Community Center Fund are hereby authorized for such purposes, and thereafter, the Basic Building Services Costs incurred in connection with the maintenance of said alteration or improvement shall be paid in accordance with this Agreement. In the event, however, that a proposed alteration or improvement is not reasonably necessary for either of the purposes set forth in the preceding subsections (1) and (2) and both Parties do not approve of the proposed alteration or improvement, then the expenditure from the Community Center Fund for said alteration or improvement is not authorized until such time, if ever, as both Parties agree upon the terms and conditions therefore. All of the costs and expenses incurred in connection with the alterations and improvements made pursuant to the first sentence of this subpart or which are approved by both Parties shall be paid for out of the Community Center Fund.

(ii) Non-Mandatory Alterations and Improvements. Notwithstanding the foregoing, alterations or improvements to the Community Facilities or that portion of the Perimeter Road located on the Land, which are not reasonably necessary for either of the purposes set forth in subsections (1) and (2) of the first sentence of the preceding subpart (i), may be made by either Party ("Altering Party"), with or without the approval of the other Party ("Other Party"), if the Altering Party is willing to pay for the entire cost of such alteration or

improvement and the entire cost of any increase in the Basic Building Services Costs as such increase directly results from such alteration or improvement during the term of this Agreement; provided that an Altering Party shall not make any such alteration or improvement to the Community Facilities or such portion of the Perimeter Road, without the consent of the Other Party, if such alteration or improvement will or is reasonably likely to have a material adverse impact on the use of the Community Facilities or High School Facilities or such portion of the Perimeter Road by the Other Party or its users as contemplated by this Agreement or on the structural integrity or mechanical systems of the Project, or any portion thereof.

(b) Additional Facilities and Roads on Contiguous Parcel. If an alteration or improvement to the Additional Facilities or that portion of the Perimeter Road located on the Contiguous Parcel is reasonably necessary (i) to protect the health and safety of the users of same, or (ii) to comply with applicable local, state or federal laws, rules or regulations, then such alteration or improvement shall be deemed accepted and approved by the Parties, and all costs and expenses in connection therewith (including, without limitation, all additional maintenance costs and expenses) shall be paid by the City of the City's own funds and not out of the Community Center Fund. In the event, however, that a proposed alteration or improvement is not reasonably necessary for either of the purposes set forth in the preceding subparts (i) and (ii), the Parties must approve the proposed alteration or improvement, and all of the costs and expenses incurred in connection with such alterations and improvements (including, without limitation, all additional maintenance costs and expenses) shall be paid by the Party requesting such alteration and improvement out of such Party's own funds and not out of either the Basic Building Services Fund or Community Center Fund.

(c) Performance of Alterations and Improvements. If any alteration or improvement is to be performed pursuant to Section 8.1(a) or (b) hereof, such alteration or improvement shall be constructed and installed by a general contractor mutually acceptable to the Parties; provided that a Party may only refuse to accept a particular contractor if such contractor is not (i) legally licensed to perform the applicable work and/or (ii) reasonably qualified to perform the applicable work. Notwithstanding the foregoing, the alterations and additions performed pursuant to Section 8.1(a) and (b) above shall not commence until (i) all necessary governmental approvals, licenses, bonds and permits have been obtained and provided to each Party and (ii) the Party causing such alteration or improvement to be made has provided to the other Party a copy of the plans and specifications for such alteration or improvement at least ten (10) business days prior to the date on which the construction of such alteration or improvement is to commence.

8.2 Equipment. Throughout the term of this Agreement, and any renewals thereof, the City shall provide for the maintenance, repair and replacement of the Equipment. In the event, however, that any new Equipment for the Community Facility ("New Equipment") is purchased, such New Equipment shall be paid for out of the Community Center Fund. All of the costs and expenses incurred in connection with the maintenance and replacement of the Equipment and New Equipment (subject to the following sentence) shall be paid for out of the Community Center Fund (subject to Section 9.4 hereof). Notwithstanding the foregoing, if either

Party desires to purchase New Equipment which will not be used exclusively for the Community Facility and by the users thereof, such New Equipment shall be paid for by such Party out of its own funds (and not out of the Community Center Fund or Basic Building Services Fund) ("Unapproved Equipment"), and such Party shall also assume responsibility for all costs and expenses and all liability incurred in connection with such Unapproved Equipment including, without limitation, maintenance, replacement and insurance for same. Such Unapproved Equipment shall be the sole property of the Party who purchases, maintains and insures same pursuant to the preceding sentence; provided that no such Unapproved Equipment and no New Equipment shall be permitted without the consent of the other Party if such Unapproved Equipment or New Equipment, as the case may be, will or is reasonably likely to have a material adverse impact on the use of the Community Facilities by such other Party or its users as contemplated by this Agreement or on the structural integrity or mechanical systems of the Project Improvements, or any portion thereof.

8.3 Equipment Insurance. The City shall be obligated to maintain and keep in full force and effect during the term of this Agreement and any renewals thereof, fire and extended coverage all risk insurance on the Equipment (and all New Equipment acquired pursuant to Section 8.2 of this Agreement but excluding Unapproved Equipment) for the full replacement value thereof (as that amount may be reasonably agreed upon by the Parties periodically from time to time throughout the term hereof) (the "Equipment Insurance"). The Equipment Insurance shall name the Parties as loss payee, but only as their respective interests may appear at the time of loss, and any other party (including, without limitation, the holder of any security interest in the Equipment or New Equipment [excluding Unapproved Equipment], if applicable, as its interest may appear at the time of loss) as either party may reasonably request. The City shall furnish to the School District a certificate(s) of insurance evidencing coverage under the Equipment Insurance (including, without limitation, the endorsement required under Section 14.16 hereof) and payment for the Equipment Insurance (a) prior to the Commencement Date and annually on each anniversary of the Commencement Date and (b) as may be reasonably requested from time to time by the School District. The Equipment Insurance shall be issued by an insurance company with a Best Rating of "A" or above or by a self insurance program organized and maintained in accordance with O.R.C. § 2744.08 and shall require that the School District shall be given a minimum of thirty (30) days written notice by the insurance carrier prior to cancellation, modification or non-renewal of such coverage. The cost of the Equipment Insurance shall be paid from the Community Center Fund. To the extent that the City fails to obtain or maintain the Equipment Insurance or fails to provide evidence of same as set forth in this Section 8.3 , the School District shall have the right to obtain the Equipment Insurance, and the costs of same shall be paid from the Community Center Fund by the City promptly upon receipt by the City of an invoice and proof of payment of the premium for the Equipment Insurance by the School District.

#### 8.4 Day-to-Day Operations and Competition Pool.

(a) Day-to-Day Operations. Subject to Section 9.7 hereof, the City shall hire and manage all Staff for purposes of performing the Day-to-Day Operations of the Community Facility, which Staff shall be compensated from the Community Center Fund pursuant to a compensation schedule established by the City in accordance with applicable law.



(b) Supervision of Competition Pool. The City shall hire and manage all Staff for purposes of providing Supervision of the Competition Pool, which Staff shall be compensated from the Community Center Fund pursuant to a compensation schedule established by the City in accordance with applicable law, provided that the School District shall reimburse the City for those hours of the School District's scheduled use of the Competition Pool (the "School District's Scheduled Competition Pool Use") in an amount equal to the compensation actually paid to the City's Staff that actually provided Supervision (which shall be limited to the compensation actually paid per hour to the City's life guards for the Supervision actually provided by such life guards during the School District's Scheduled Competition Pool Use and to the compensation (including any benefits such as health insurance and dental care insurance included within such compensation) actually paid to the Community Center Aquatic Supervisor, based on an hourly rate determined by dividing the Community Center Aquatic Supervisor's annual salary by the total number of hours such life guards are actually supervised by such Community Center Aquatic Supervisor during the School District's Scheduled Competition Pool Use) of the Competition Pool during the School District's Scheduled Competition Pool Use ("Competition Pool Staff Compensation"); provided that if the School District notifies the City or the Community Center Manager (or any designee of the Community Center Manager whose identity the Community Center Manager has previously disclosed to the School District) that the School District will not be using the Competition Pool during a particular period of scheduled use at least twenty-four (24) hours prior to the time at which such scheduled use is to commence, the School District shall have no liability for any Competition Pool Staff Compensation paid by the City during such period of scheduled use. The foregoing notwithstanding, to the extent that the use of the Competition Pool was shared with third parties and/or the City (and/or scheduled to be shared, equally, by the Parties under Article IV hereof or otherwise, whether or not either Party actually used the Competition Pool during those hours of scheduled use but subject to the School District's right to cancel its scheduled use with the twenty-four (24) hour notice described in the preceding sentence) during the applicable School District's Scheduled Competition Pool Use, such reimbursement by the School District shall be limited to an amount that is in proportion to that part of the Competition Pool designated for the School District's priority of use or exclusive use during such School District's Scheduled Competition Pool Use or, if no such area is designated, such reimbursement shall be fifty (50%) percent of the applicable Competition Pool Staff Compensation. The School District shall pay, from time to time, the foregoing reimbursement to the City within thirty (30) days of receiving an itemized statement of the amount of such reimbursement, provided that such payment shall be made from the School District's own funds rather than from the Basic Building Services Fund.

(c) Other Staff. Notwithstanding the foregoing but subject to Sections 9.2 and 9.7 hereof, any other Staff or any other persons employed by the City or the School District in connection with activities or programs which the City or the School District sponsors shall be compensated by the Party who sponsors the particular activity or the program and shall not be compensated from the Community Center Fund or the Basic Building Services Fund.

8.5 Pool Maintenance. Notwithstanding anything in this Agreement to the contrary, the City shall perform or shall cause to be performed all sanitation, cleaning, chemical treating, chemical testing, maintenance, repair and replacement that is reasonably necessary in connection with the operation, maintenance and use of the Leisure Pool and the Competition Pool as contemplated by this Agreement and in order to maintain the same in good condition and repair and otherwise in a condition consistent with all applicable laws (collectively, "Pool Maintenance"). The costs and expenses (which includes the cost of obtaining pool chemicals) of all Pool Maintenance (collectively, "Pool Maintenance Expenses") shall be paid for by the City from the Community Center Fund. Notwithstanding the foregoing, within thirty (30) days of receiving an itemized statement of all Pool Maintenance Expenses incurred by the City for the preceding thirty (30) day period ("Preceding Period"), the School District shall reimburse the City for that portion of such Pool Maintenance Expenses which is equal to the product of (a) such Pool Maintenance Expenses and (b) a percentage determined by dividing (i) the School District's total hours of scheduled use of the Competition Pool during the applicable Preceding Period (whether or not such use actually occurred but subject to the School District's right to cancel its scheduled use with the twenty-four (24) hour notice described in Section 8.4(b) hereof) ("School District Scheduled Competition Pool Use") by (ii) the total hours of the applicable School District Scheduled Competition Pool Use plus the total hours of use by all third parties and the total hours of scheduled use by the City during the applicable Preceding Period; provided that, to the extent that the School District's scheduled use of the Competition Pool during the applicable Preceding Period was shared with third parties and/or the City (and/or was scheduled to be shared, equally, by the Parties under Article IV hereof or otherwise, whether or not either Party actually used the Competition Pool during those hours of scheduled use but subject to the School District's right to cancel its scheduled use with the twenty-four (24) hour notice described in Section 8.4(b) hereof) ("Shared Scheduled Use"), only fifty (50%) percent of the total hours applicable to such Shared Scheduled Use shall be included within the determination of the School District Scheduled Competition Pool Use under the preceding subpart (i). ***Example: For the Preceding Period of April 1, 2003 through April 30, 2003, the City incurred Pool Maintenance Expenses of \$1,000.00. Further, during such Preceding Period, the total hours of scheduled use of the Competition Pool were 200 hours, 60 hours of which was the City Scheduled Competition Pool Use, 120 hours of which was the School District Scheduled Competition Pool Use and 20 hours of which was use by all third party users. Accordingly, the reimbursement due from the School District for such Preceding Period would be \$600.00, determined as follows:  $\$600.00 = \$1,000.00 (120 \text{ hours} / 200 \text{ hours})$ .*** The School District shall pay, from the School District's own funds, from time to time, the foregoing reimbursement to the City within thirty (30) days of receiving an itemized statement of the amount of such reimbursement.

8.6 Community Facility Supplies. Any and all reasonable costs and expenses associated with the acquisition of operational, programming and office supplies exclusively used in the Community Facility and any other supplies customarily used by a community and fitness type facility in its daily operations and exclusively used in the Community Facility shall be provided by the City and shall be paid for out of the Community Center Fund.

## ARTICLE IX BASIC BUILDING SERVICES

9.1 Utilities. Throughout the term of this Agreement and any renewals thereof, but subject to Section 14.18 hereof and the Ground Lease and Easement Agreement, the School District shall provide or shall arrange for the provision of all utilities to the Community Facilities and the Perimeter Road (including that portion of the Perimeter Road located on the Contiguous Parcel) which utilities shall include gas, electricity, water, sewer, heating, cooling and trash removal (collectively, "Utilities"), provided that Utilities shall not include any telephone services. The foregoing notwithstanding, if reasonably necessary to obtain a more favorable rate from a provider of any Utilities, the School District shall have the right to cause the account established with such provider to be listed under the name of the City and the School District, and the City shall promptly execute any documents reasonably requested by any such provider in connection therewith. The cost of providing the Utilities shall be paid for out of the Basic Building Services Fund.

9.2 Maintenance. Subject to Sections 8.5 and 14.18 hereof, throughout the term of this Agreement, and any renewals thereof, the School District shall maintain the Community Facilities in a safe and serviceable manner (reasonable wear and tear, and damage by Casualty excepted), provide regular custodial services (including, without limitation, supervision of custodial services), and make all necessary repairs and replacements to same, including window glass, walls, structural members, roof, floor coverings, doors, all building systems exclusively serving the Community Facilities (including, without limitation, heating, ventilating and air conditioning system ["HVAC"]) (collectively, "Maintenance"). The Maintenance shall also include the maintenance, repair and replacement of (a) the portion of Perimeter Road located on the Land; (b) the bulbs and light standards on and in the Community Facilities and Perimeter Road; and (c) snow and ice removal from the Perimeter Road, Community Facility Driveways, Community Facility Sidewalks and Community Facility Parking Lots. The School District shall cooperate with the Community Center Manager (who the City shall cause to fully cooperate with the School District) in connection with coordinating and scheduling of the Maintenance such that the interruption of and interference with the use of the Community Facilities, as contemplated by this Agreement, is limited to the extent reasonably possible, provided that the Parties acknowledge and agree that certain Maintenance activities and emergencies may reasonably require that portions of the Community Facilities and/or Perimeter Road, as the case may be, be temporarily closed while such Maintenance activities are being performed and completed and/or such emergencies are being resolved and that the School District shall have no liability to the City in connection with same. The Basic Building Services Costs incurred in connection with the Maintenance shall be paid for out of the Basic Building Services Fund. Subject to Sections 8.4(b) and 8.5 hereof, the School District shall hire and manage all Staff for purposes of performing the foregoing Maintenance, which Staff shall be compensated from the Basic Building Services Fund pursuant to a compensation schedule established by the School District in accordance with applicable law.

9.3 Insurance.

(a) Community Facilities and Roads. The School District shall be obligated to maintain and keep in full force and effect during the term of this Agreement, and any renewals thereof, (i) fire and extended coverage all risk insurance on the Community Facilities and that portion of the Perimeter Road located on the Land in an amount equal to the full replacement cost thereof (as that amount may be reasonably agreed upon by the Parties periodically from time to time throughout the term hereof) (the "Property

Insurance") and (ii) commercial general liability insurance on the buildings and common areas serving the Community Facilities and that portion of the Perimeter Road located on the Land (including personal injury, death, and property damage insurance) in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence (the "Liability Insurance") (collectively, the Property Insurance and the Liability Insurance shall be referred to herein as the "Insurance") (collectively, the Equipment Insurance and the Insurance shall be referred to herein as the "Insurance Policies"). The Property Insurance shall include a standard mortgage endorsement in favor of the holder(s) of all leasehold mortgages on the Community Facilities and the above referenced portion of the Perimeter Road. The Liability Insurance shall name as additional insured the City and any additional parties as the City or the School District may reasonably request from time to time. The School District shall furnish to the City a certificate(s) of coverage evidencing the coverage required hereunder with respect to the Insurance (including, without limitation, the endorsement required under Section 14.16 hereof) and payment for the Insurance (i) prior to the Commencement Date and annually on each anniversary of the Commencement Date and (ii) as may be reasonably requested from time to time by the City. The Insurance shall be issued by an insurance company with a Best Rating of "A" or above or by a self insurance program operated and maintained in accordance with O.R.C. § 2744.08 and shall require that the City shall be given a minimum of thirty (30) days written notice by the insurance carrier prior to cancellation, modification or non-renewal of such coverage.

(b) High School Facilities. The Parties acknowledge and agree that the High School Facilities cannot be separately insured from the Community Facilities under a policy of Property Insurance. Accordingly, the High School Facilities shall also be covered under the Property Insurance (under substantially the same terms required or permitted under the Property Insurance with respect to the Community Facilities, provided that the School District shall reasonably determine the full replacement cost of the High School Facilities), and the School District shall be responsible for paying that portion of the premiums for the Property Insurance that is applicable to the High School Facilities in accordance with Section 5.3(e)(v) hereof.

(c) Cost of Insurance. The cost of the Insurance shall be paid out of the Basic Building Services Fund. To the extent that the School District fails to obtain or maintain the Insurance or fails to provide evidence of same as set forth in Section 9.3 above, the City shall have the right to obtain the applicable Insurance, and the costs of same shall be paid from the Basic Building Services Fund promptly upon receipt by the Treasurer from the City of an invoice and proof of payment of the applicable premiums by the City.

(d) Proceeds of Property Insurance. The Parties acknowledge and agree that any and all proceeds received from the Property Insurance are the sole property of the School District, subject to any expenditures required in accordance with the terms and conditions of this Agreement.

(e) Additional Liability Insurance. In addition to the Liability Insurance, each Party ("Insuring Party") shall be obligated to pay for (from such Insuring Party's own funds and not from the Basic Building Services Fund or the Community Center Fund) and maintain and keep in full force and effect during the term of this Agreement, and any renewals thereof, commercial general liability insurance covering such Insuring Party's

and such Insuring Party's agents', employees', licensees' (exclusive of the other Party and its agents, employees, licensees and invitees) and invitees' activities on, in and about and use of the Project (including personal injury, death, and property damage insurance) in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence (the "Additional Liability Insurance"). Each Insuring Party shall furnish to the other Party a certificate(s) of coverage evidencing the coverage required hereunder with respect to the Additional Liability Insurance (including, without limitation, the endorsement required under Section 14.16 hereof) and payment for the Additional Liability Insurance (i) prior to the Commencement Date and annually on each anniversary of the Commencement Date and (ii) as may be reasonably requested from time to time by such other Party. The Additional Liability Insurance shall be issued by an insurance company with a Best Rating of "A" or above or by a self insurance program organized and maintained in accordance with O.R.C. § 2744.08 and shall require that the other Party (i.e., the Party that is not the Insuring Party under such Additional Liability Insurance) shall be given a minimum of thirty (30) days written notice by the insurance carrier prior to cancellation, modification or non-renewal of such coverage.

9.4 Damage or Destruction to Community Facilities, Perimeter Road, Equipment or New Equipment. Unless the parties hereto agree otherwise, in the event of damage or destruction from fire or any other casualty (as to any such event, "Casualty") to all or a portion of the Community Facilities, Equipment and/or New Equipment (excluding Unapproved Equipment) and/or that portion of the Perimeter Road located on the Land, if applicable, the proceeds of the applicable Insurance Policies shall be applied to the repair, restoration or replacement of the same which repair, restoration and replacement shall be performed by the School District. To the extent, however, that (a) the proceeds of the applicable Insurance Policies do not cover such repair, restoration or replacement or (b) the holder of any leasehold mortgage with respect to the Community Facilities and the above referenced portion of the Perimeter Road or any security interest with respect to the Equipment or New Equipment requires that the proceeds of the applicable Insurance Policies be applied to reduce the loan or debt secured by such leasehold mortgage or security interest ("Debt Reduction") or (c) after Debt Reduction, the proceeds of the applicable Insurance Policies do not cover such repair, restoration or replacement, the costs and expenses of same (collectively, such uncovered costs and expenses being referred to herein as, "Uncovered Casualty Expenses") shall be paid out of the Basic Building Services Fund. If the repair, restoration or replacement is not economically feasible or otherwise reasonable based upon the mutual agreement of the Parties, then this Agreement shall terminate, and the proceeds of said applicable Insurance Policies shall be distributed (a) first toward payment of Debt Reduction and (b) second, if any of such proceeds remain after Debt Reduction, toward payment of the Parties, based on their respective ownership interests set forth in Sections 3.3 and 3.4 hereof, as such ownership interests exist immediately prior to termination of this Agreement, or based on such other fair and equitable method as the Parties may reasonably agree upon. Notwithstanding the foregoing, in the event that the School District declines to repair or restore the Community Facilities, Equipment and/or New Equipment (excluding Unapproved Equipment) and/or the above referenced portion of the Perimeter Road or otherwise fails to diligently proceed with such repair or restoration and to complete same within a reasonable time after damage to or destruction of all or part of the Community Facilities, Equipment and/or New Equipment (excluding Unapproved Equipment) and/or the above referenced portion of the Perimeter Road and the Parties fail to terminate this Agreement pursuant to the preceding sentence, the City shall have the right, but not the obligation, to

complete such repair or restoration; and for purposes of such repair or restoration by the City, the proceeds of the applicable Insurance Policies shall be assigned to the City (subject to Debt Reduction) for purposes of completing same and the City shall have the right to be reimbursed from the Basic Building Services Fund (subject to Section 5.5(a) hereof), to the extent there are Uncovered Casualty Expenses in connection with such repair or restoration, within thirty (30) days of providing the School District with a written request for such reimbursement and an itemized statement of the costs and expenses comprising such reimbursement.

9.5 Damage or Destruction of High School. In the event of a Casualty that affects the High School Facilities, to the extent that the proceeds of the Property Insurance do not cover Debt Reduction and the costs and expenses of the repair or restoration of the High School Facilities and all other portions of the Community Facilities and the portion the Perimeter Road located on the land which are also damaged or destroyed (collectively, such uncovered costs and expenses being referred to herein as, "Uncovered Expenses"), the School District shall be responsible for paying that portion of the Uncovered Expenses which is equal to the product of (the "High School Casualty Share") (a) the Uncovered Expenses and (b) a percent which is based on a fraction, (i) the numerator of which is the combined floor area and/or (as the case may be) square feet of that portion of the High School Facilities which has been damaged or destroyed by the applicable Casualty (as reasonably determined by the School District), and (ii) the denominator of which is the combined floor area and/or square feet of that portion of the Community Facilities which has been damaged or destroyed by the applicable Casualty (as mutually agreed upon by the Parties) and of that portion of the High School Facilities which has been damaged or destroyed by the applicable Casualty (as determined in the preceding subpart (i) above). ***Example: The High School and the Interior Shared Areas have sustained \$1,000,000 of fire damage, of which \$100,000 are Uncovered Expenses. The combined floor area of the High School and Interior Shared Areas that have been damaged by the fire is 1,000 square feet, 200 square feet of which is located in the High School. The School District shall pay \$20,000 of such Uncovered Expenses, which is determined as follows:  $\$20,000 = \$100,000 \times (200 \text{ square feet} / 1,000 \text{ square feet})$***  The School District shall reimburse the Basic Building Services Fund for the High School Casualty Share of all Uncovered Expenses as promptly as is reasonably possible as they are incurred by the Basic Building Services Fund.

9.6 Condemnation of Community Facilities and/or Portion of Perimeter Road on Land. Unless the parties hereto agree otherwise, in the event that all or a part of the Community Facilities and/or that portion of the Perimeter Road located on the Land shall be taken, condemned or appropriated under power of eminent domain or by any competent authority for any public or quasi-public use or purpose, whether such taking, condemnation or appropriation be by agreement (i.e. negotiated settlement) or by suit (as to any one of them, "Condemnation"), then this Agreement shall terminate as to the part subject to the Condemnation on the date that the Parties are required to yield possession thereof. If the Condemnation is only as to a part of the Community Facilities and/or the above referenced portion of the Perimeter Road, then the proceeds of all awards, settlements or purchase monies received by either Party in connection with such Condemnation (collectively, "Condemnation Proceeds") shall be applied to the repair, restoration or replacement of the remaining portions of the Community Facilities and/or said portion of the Perimeter Road, which repair, restoration or replacement shall be performed by the School District. To the extent, however, that (a) such Condemnation Proceeds do not cover such repair, restoration or replacement or, (b) the holder of any leasehold mortgage with respect to the Community Facilities and the above referenced portion of the Perimeter Road requires that the

portion of the Condemnation Proceeds applicable to the School District's ownership of the Community Facilities (as set forth in Section 3.3 hereof) be applied to reduce the loan or debt secured by such leasehold mortgage ("Condemnation Debt Reduction"), or (c) after application to Condemnation Debt Reduction, the remaining Condemnation Proceeds are insufficient to pay for the cost of such repair, restoration or replacement, the costs and expenses of same (collectively, such uncovered costs and expenses being referred to herein as, "Uncovered Condemnation Expenses") shall be paid out of the Basic Building Services Fund. Notwithstanding the foregoing, if (a) the entire Community Facilities and/or the above referenced portion of the Perimeter Road are subject to a Condemnation or (b) the repair, restoration or replacement of the remaining portions of the Community Facilities and/or such portion of the Perimeter Road is not economically feasible or otherwise reasonable based upon the mutual agreement of the Parties or (c) more than fifty (50) percent of the Community Facilities is subject to the Condemnation, then this Agreement shall terminate, and the Condemnation Proceeds shall be distributed (a) first toward payment of Condemnation Debt Reduction and (b) second, if any of such proceeds remain after Condemnation Debt Reduction, toward payment to the Parties, based on their respective ownership interests set forth in Sections 3.3 and 3.4 hereof, as such ownership interests exist immediately prior to termination of this Agreement, or based on such other fair and equitable method as the Parties may reasonably agree upon. Notwithstanding the foregoing, in the event that the School District declines to repair or restore the remaining portions of the Community Facilities and/or the above referenced portion of the Perimeter Road or otherwise fails to diligently proceed with such repair or restoration and to complete same within a reasonable time after such Condemnation and this Agreement has not otherwise been terminated pursuant to the preceding sentence, then the City shall have the right, but not the obligation, to complete such repair or restoration; and for purposes of such repair or restoration by the City, the Condemnation Proceeds applicable to that portion of the Community Facilities and/or Perimeter Road subject to the Condemnation shall be assigned to the City (subject to Condemnation Debt Reduction) for purposes of completing same and the City shall have the right to be reimbursed from the Basic Building Services Fund (subject to Section 5.5(a) hereof), to the extent there are Uncovered Condemnation Expenses in connection with such repair or restoration, within thirty (30) days after providing the School District with written request for such reimbursement and an itemized statement of the costs and expenses comprising such reimbursement.

9.7 Supervision and Staffing of Auditorium. Notwithstanding anything in this Agreement to the contrary, the School District shall hire and manage all Staff for purposes of providing Supervision and operation (i.e., lighting and technical support) (collectively, "Staff Support") of the Auditorium, which Staff shall be compensated by the School District, from its own funds (except Staff providing Maintenance of the Auditorium who shall be paid from the Basic Building Services Fund), pursuant to a compensation schedule established by the School District in accordance with applicable law, provided that the City shall reimburse the School District for those hours of the City's scheduled use of the Auditorium (the "City's Scheduled Auditorium Use") in an amount equal to the compensation actually paid to the School District's Staff that actually provided Staff Support (i.e. security guards and lighting and technical support Staff on duty during the City's Scheduled Auditorium Use) of the Auditorium during the City's Scheduled Auditorium Use ("Auditorium Staff Compensation"); provided that if the City notifies the School District or the Asst Superintendent of Operations that the City will not be using the Auditorium during a particular period of scheduled use at least twenty-four (24) hours prior to the time at which such scheduled use is to commence, the City shall have no liability for any

Auditorium Staff Compensation paid by the School District during such period of scheduled use. The foregoing notwithstanding, to the extent that the use of the Auditorium was shared with third parties and/or the School District (and/or scheduled to be shared, equally, by the Parties under Article IV hereof or otherwise, whether or not either Party actually used the Auditorium during those hours of scheduled use but subject to the City's right to cancel its scheduled use with the twenty-four (24) hour notice described in the preceding sentence) during the applicable City's Scheduled Auditorium Use, such reimbursement by the City shall be limited to an amount that is in proportion to that part of the Auditorium designated for the City's priority of use or exclusive use during such City's Auditorium Scheduled Use or, if no such area is designated, such reimbursement shall be fifty (50%) percent of the applicable Auditorium Staff Compensation. The City shall pay, from time to time, the foregoing reimbursement to the School District within thirty (30) days of receiving an itemized statement of the amount of such reimbursement, provided that such payment shall be made from the City's own funds rather than from the Community Center Fund.

9.8 Security. Throughout the term of this Agreement, and any renewal thereof, the School District shall arrange for the provision of basic security services to the Shared Areas. All costs incurred in connection with such basic security services (i.e., automated cameras, alarm activated doors and similar automated and unmanned security mechanisms) ("Basic Security") to the Shared Areas shall be paid for from the Basic Building Services Fund. Notwithstanding the foregoing but subject to Sections 8.4(b) and 9.6 hereof, each Party shall be responsible for providing any security, in excess of Basic Security, ("Extra Security") during its scheduled use of the Shared Areas and shall be obligated to provide all security for any events or programs which are sponsored by such Party within the Community Center or the High School and shall pay for such security out of its own funds. The foregoing notwithstanding, the City may pay for Extra Security for its scheduled use of the Shared Areas and for any security for the Community Center from the Community Center Fund.

## **ARTICLE X ADVISORY COMMITTEE**

10.1 Advisory Committee. The Parties shall establish an Advisory Committee for the purpose of resolving scheduling conflicts with respect to the use of the Community Facilities by the Parties.

(a) Composition. The Advisory Committee shall be composed of four (4) members. The members of the Advisory Committee shall be as follows:

- (i) A member of the School Board, appointed by the School Board ("School Board Member");
- (ii) The Superintendent or his or her designee;
- (iii) A member of City Council, appointed by the Mayor ("City Council Member"); and
- (iv) The City Manager or his or her designee.



(b) Appointed Members. Those members of the Advisory Committee who are members by virtue of appointment shall serve a term of one (1) Contract Year, provided that the same person may be appointed for successive one (1) Contract Year terms.

(c) Quorum and Majority. Three (3) members of the Advisory Committee shall constitute a quorum, and at least a quorum must be present at a meeting duly called and held pursuant to this Article X in order for the Advisory Committee to take any action required or requested pursuant to this Agreement. Each member of the Advisory Committee shall possess one (1) vote in taking any action required or requested to be made by the Advisory Committee under this Agreement, and three (3) votes shall constitute a majority, which shall be necessary for the Advisory Committee to take any action required or requested under this Agreement.

(d) Meetings of Advisory Committee.

(i) Resolving Disputes. Within ten (10) days of receiving a Scheduling Resolution Request in accordance with Section 10.2(a) hereof, the Advisory Committee shall meet for the purpose of attempting to resolve the applicable Scheduling Dispute (as defined in Section 10.2 hereof). Such meetings may be held at any place within Warren County, Ohio within the foregoing ten (10) day period on a date and at a time and place mutually acceptable to the members of the Advisory Committee and the Asst Superintendent of Operations and Community Center Manager. Further, any Second Meeting (as defined in Section 10.2(c) hereof) shall be subject to the terms and conditions of this Section 10.1.

(ii) Compliance with O.R.C. § 121.22, et seq. All meetings of the Advisory Committee shall comply with the provisions of O.R.C. § 121.22, et seq., as same may be amended and supplemented from time to time.

(iii) Electronic Presence. Meetings of the Advisory Committee may be held through any communications equipment if all persons participating can simultaneously hear each other, and participation in a meeting pursuant to this subpart (iii) shall constitute presence at such a meeting.

(iv) Presiding. The Superintendent and City Manager shall alternate presiding at the meetings of the Advisory Committee; provided that if the Superintendent or City Manager is absent from a meeting at which he or she is to preside, the School Board Member, if it is the Superintendent that is to preside and is absent, shall preside at such meeting, or the City Council Member, if it is the City Manager that is to preside and is absent, shall preside at such meeting.

(v) Minutes of Meetings. The School Board Member and the City Council Member shall alternate Contract Years in keeping minutes at the meetings of the Advisory Committee; provided that if the School Board Member or City Council Member is absent from a meeting at which he or she is to keep the minutes of such meeting, the other shall keep the minutes of such meeting.

10.2 Arbiter of Disputes. In the event that a Dispute arises regarding scheduling of the Parties' respective use of the Community Facility (as to any such Dispute, "Scheduling Dispute"), before either Party shall submit the resolution of such Scheduling Dispute to City Council and the School Board, Mediation or Binding Arbitration under Section 7.5 hereof, such Scheduling Dispute shall be submitted to the Advisory Committee as the initial arbiter of such Scheduling Dispute.

(a) Scheduling Resolution Request. A Requesting Party desiring resolution of a particular Scheduling Dispute shall submit a written request to each member of the Advisory Committee (i) requesting resolution of the Scheduling Dispute, (ii) describing in detail the nature of the Scheduling Dispute, (iii) describing what efforts have been made by the Parties to resolve the Scheduling Dispute and (iv) setting forth what resolution the Requesting Party desires (collectively, "Scheduling Resolution Request").

(b) Meeting. Each Resolution Request shall be reviewed and considered by the Advisory Committee and the Advisory Committee shall make recommendations with respect to such Resolution Request at the meeting held in accordance with Section 10.1(d) hereof.

(c) Advisory Committee Recommendations. At the meeting at which a particular Resolution Request is to be reviewed and considered by the Advisory Committee in accordance with Section 10.1(d)(i) hereof (the "Scheduling Resolution Meeting"), the Advisory Committee shall, in good faith, review and consider, not only the information contained within the Scheduling Resolution Request, but also any testimony or supporting written materials provided by the Requesting Party and the other Party in connection with such Scheduling Resolution Request at the Scheduling Resolution Meeting for purposes of making the Advisory Committee's recommendations and shall, in good faith, endeavor to provide recommendations to the Requesting Party and the other Party hereto with respect to the applicable Scheduling Dispute; provided that if the Advisory Committee is unable to provide such recommendations at the Scheduling Resolution Meeting, a subsequent meeting (the "Second Meeting") shall occur within ten (10) business days from the date of the Scheduling Resolution Meeting for purposes of making such recommendations. The Advisory Committee shall have the discretion to consider additional testimony and supporting written materials at the Second Meeting for purposes of making the recommendations. In the event that the Advisory Committee is unable to make recommendations with respect to the particular Scheduling Resolution Request at the Second Meeting, the Requesting Party and the other Party shall then have the right to seek resolution of the applicable Scheduling Dispute via Binding Arbitration.

(d) Binding Effect of Recommendations. The foregoing notwithstanding, no recommendations made by the Advisory Committee shall be binding upon either Party unless City Council and the School Board each vote to approve the applicable recommendations. Accordingly, unless recommendations made by the Advisory Committee under the foregoing subparagraph (c) are approved by City Council and the School Board, either Party may elect to pursue resolution of the applicable Scheduling Dispute with City Council and the School Board in accordance with Section 7.5(b) hereof.

(e) Equitable Relief. Notwithstanding anything herein to the contrary, nothing in this Article X shall limit or otherwise prohibit either party from the right to first pursue the remedies specifically described under the foregoing Section 7.4(a)(i) and/or (iii) or Section 7.4(b)(i), (iii) and/or (iv), as the case may be, and the exercise of any such remedies shall not be deemed an election of remedies.

## **ARTICLE XI MEMBERSHIP IN THE COMMUNITY FACILITY**

Notwithstanding that one of the purposes of the Community Facility is to promote the community recreational and fitness needs of the residents of the City and of the School District, the Parties understand and agree that the residents of the City and the School District shall have priority over all others with respect to obtaining a membership in the Community Facility.

## **ARTICLE XII JOINT OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

12.1 Mutual Cooperation. The Parties shall, in good faith, exercise all reasonable efforts to cooperate with each other in connection with this Agreement.

12.2 Authority. The Parties have taken all required action to approve and adopt this Agreement. This Agreement is a duly authorized, valid and binding Agreement of the Parties, enforceable against them in accordance with its terms. Further, the representatives signing this Agreement have the requisite authority to do so.

12.3 Representations and Warranties. Each Party warrants and represents to the other Party that the execution and delivery of this Agreement by such Party:

- (a) Does not and will not violate or conflict with any statute, regulation, judgment, order, writ, decree, or injunction applicable to them; and
- (b) Does not and will not violate or conflict with any charter provision or by-law of the parties, or any existing mortgage, indenture, contract, licensing agreement, or other agreement binding on such Party.

12.4 Fiscal Certification by the City. As evidenced by her signature on this Agreement, Jennifer Heft, the Finance Director of the City, hereby certifies, in accordance with O.R.C. § 5705.41 and the City Charter, that the amount of money necessary to meet the obligations of the City under this Agreement has been lawfully appropriated for that purpose and is in the treasury of the City or is in the process of collection to an appropriate fund.

12.5 Fiscal Certification by the School District. In accordance with O.R.C. § 5705.412, the School District hereby certifies that the School District has in effect the authorization to levv taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the School District on the date on which the School District has executed this Agreement are sufficient to provide the operating revenues necessary to enable the School District to maintain all personnel and programs for all of the days set forth in its adopted School calendars for the current School Fiscal

Year and for a number of days in succeeding School Fiscal Years equal to the number of days instruction was held or is scheduled for the current School Fiscal Year.

### ARTICLE XIII PARTY WALL

13.1 Party Wall. The parties acknowledge that the High School and the Community Facility shall share a common wall, roof and hallway (collectively, the "Party Wall"). To the extent not inconsistent with the other provisions of this Agreement, the general rules of law pertaining to party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Party Wall. The term "Party Wall" shall be deemed to include all utility lines serving the Community Facility and the High School but shall be deemed to exclude the Additional Facilities.

13.2 Sharing of Maintenance and Repair Costs. The costs and expenses relative to the maintenance and repair of the Party Wall shall all be deemed to be part of the Basic Building Services Costs and shall be paid from the Basic Building Services Fund, provided that, at the end of each School Fiscal Year as provided below, the School District shall be responsible for paying that portion of the Basic Building Services Costs which is equal to the product of (the "High School Party Wall Share") (i) the total cost of all repair and maintenance of the Party Wall for the applicable School Fiscal Year and (ii) a percentage which is based on a fraction, (a) the numerator of which is the combined floor area of the High School, and (b) the denominator of which is the combined floor area of the Community Facility and the High School. The foregoing notwithstanding, the foregoing definition of "High School Party Wall Share" shall be subject to adjustment from time to time to the extent the square footage within the High School and/or the Community Facility changes after the Commencement Date. If applicable, within thirty (30) days from the date that the School Fiscal Year Basic Building Services Statement becomes available for the preceding School Fiscal Year, the School District shall deposit the High School Party Wall Share into the Basic Building Services Fund.

13.3 Destruction of Party Wall by Fire or Other Casualty. The damage to or destruction of the Party Wall in connection with Casualty and the costs and expenses associated therewith shall be governed by the same terms and conditions which govern the damage to or destruction of the Community Facilities in connection with Casualty as set forth in Section 9.4 hereof; provided that in the event the Party Wall is so damaged or destroyed and to extent the proceeds of the Property Insurance do not cover Debt Reduction and the costs and expenses of the repair or restoration of the Party Wall and all other portions of the Community Facility, which are also damaged or destroyed (collectively, "Uncovered Casualty Expenses"), the School District shall be responsible for paying that portion of the Uncovered Casualty Expenses which is equal to the product of (the "Party Wall Casualty Share") (a) the Uncovered Casualty Expenses and (b) a percentage which is based on a fraction, (i) the numerator of which is the combined floor area of the High School, and (ii) the denominator of which is the combined floor area of the Community Facility (exclusive of the Outdoor Recreation/Athletic Facilities) and the High School. The foregoing notwithstanding, the foregoing definition of "Party Wall Casualty Share" shall be subject to adjustment from time to time to the extent the square footage within the High School and/or the Community Facility changes after the Commencement Date. ***Example: The Party Wall has sustained \$100,000 of fire damage, of which \$10,000 are Uncovered Casualty Expenses. The School District shall pay \$7,031.94 of such Uncovered Casualty Expenses,***

*which is determined as follows:  $\$7,031.94 = \$10,000.00 \times (375,010 \text{ square feet} / 533,295 \text{ square feet})$ .* The School District shall reimburse the Basic Building Services Fund for the Party Wall Casualty Share of all Uncovered Casualty Expenses as promptly as is reasonably possible as they are so incurred by the Basic Building Services Fund.

13.4 Condemnation of the Party Wall. Condemnation of all or any portion of the Party Wall and the costs and expenses associated with the repair, restoration and replacement thereof in connection with any such Condemnation shall be governed by the same terms and conditions which govern Condemnation of all or any portion of the Community Facilities and/or Perimeter Road and the repair, restoration and replacement of same as set forth in Section 9.5 hereof; provided that in the event the Condemnation Proceeds do not cover Debt Reduction and the costs and expenses of the repair, restoration and replacement of the Party Wall and all other portions of the Community Facilities and Perimeter Road requiring repair, restoration and replacement (collectively, "Uncovered Condemnation Expenses"), the School District shall be responsible for paying that portion of the Uncovered Condemnation Expenses which is equal to the product of (the "Party Wall Condemnation Share") (a) the Uncovered Condemnation Expenses and (b) a percentage which is based on a fraction, (i) the numerator of which is the combined floor area of the High School, and (ii) the denominator of which is the combined floor area of the Community Facility (exclusive of the Outdoor Recreation/Athletic Facilities) and the High School. *Example: The cost of repairing, restoring and replacing the Party Wall will be \$100,000, \$10,000 of which is Uncovered Condemnation Expenses. The School District shall pay \$7,031.94 of such Uncovered Condemnation Expenses, which is determined as follows:  $\$7,031.94 = \$10,000 \times (375,010 \text{ square feet} / 533,295 \text{ square feet})$ .* The School District shall reimburse the Basic Building Services Fund for the Party Wall Condemnation Share of all Uncovered Expenses as promptly as is reasonably possible as they are so incurred by the Basic Building Services Fund.

13.5 Miscellaneous. The parties shall be deemed to have accepted the Party Wall covenants set forth in this Article XIII and shall have the right to use the Party Wall jointly. The term "use" shall include reasonable normal use for the purposes for which the Party Wall was designed and constructed. Neither party may alter, extend or increase the height of the Party Wall except upon the prior written approval of the other Party. No such alteration, extension or increase in height may be made which impairs the strength or injures the existing wall, roof, or foundation of the Community Facility or the High School. In the event such extension or increase in height of the Party Wall is approved by the Parties, the School District shall perform all work related to such extension or increase, and all costs and expenses in connection therewith shall be paid out of the Community Center Fund.

#### ARTICLE XIV MISCELLANEOUS

14.1 Further Assurances. The Parties, and each of them agree at the time and from time to time, to execute any and all documents reasonably requested by the other to carry out the intent of this Agreement.

14.2 Captions. The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any other provisions hereof.

14.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, subject to Section 14.7 hereof.

14.4 No Partnership. Nothing contained in this Agreement or any of the documents to be executed pursuant hereto shall be interpreted so as to create a partnership or any other arrangement whereby one of the Parties is authorized to act as an agent for another.

14.5 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties, and no other person or entity shall have a right of action hereunder or the right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary hereunder.

14.6 Governing Law. This Agreement shall be governed by the laws of the State of Ohio. All provisions of applicable law, including, without limitation, all immunities from suitor liability, are incorporated herein by reference as if fully set forth herein.

14.7 No Assignment. Neither Party may assign, transfer or otherwise convey or encumber any or all of its rights or obligations hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, (a) the School District shall have the right, without the prior consent of the City, to (i) to grant a mortgage on its leasehold interest in the Project, or any portion thereof, to secure any financing or replacement financing which it obtains in connection with the construction of the Project pursuant to the terms of the Ground Lease and (ii) assign its rights and obligations in connection with an assignment of the Ground Lease or license its rights hereunder in connection with a sublease of the High School, or portion thereof, under the Ground Lease, and (b) the City shall have the right, without the prior written consent of the School District, to grant a mortgage on its subleasehold interest in the Community Center, or any portion thereof, to secure any financing or replacement financing reasonably necessary to perform the City's obligations in connection with providing the Community Center Services.

14.8 Entire Agreement; Amendment. This Agreement with the exhibits attached hereto sets forth entire understanding between the Parties relating to the subject matter contained herein and merges all prior discussions between them. No amendment to this Agreement shall be effective unless it is in writing and executed by the Parties.

14.9 No Merger. The ownership of the all of the Land by the City and the rights of use granted to the City hereunder with respect to the use of the Community Facility shall not effect a merger and termination of this Agreement.

14.10 Compliance with Law. The Parties shall each shall comply with all laws, ordinances and regulations applicable to the Project. However, neither Party assumes any conditions, provisions, or services set forth in this Agreement, except as specified herein or as otherwise required by applicable law.

14.11 Estoppel Certificates. At any time, and from time to time, within ten (10) business days after notice or request by either Party, or its designee (the "First Party"), the other Party (the "Second Party") shall execute and deliver to the First Party a written statement (reasonably acceptable in form and content to the First Party and the Second Party) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified) and that to the knowledge of the Second Party there exists

no default under this Agreement or circumstances which with the passage of time would result in the existence of such a default, other than as specified therein.

14.12 Easement Agreement. In order to effectuate the common use and operation of the Land, Community Facilities, Perimeter Road and Additional Facilities and portions of the Contiguous Parcel and to provide for the orderly use and enjoyment thereof, the parties shall, as part of this Agreement, execute the Easement Agreement attached hereto as Exhibit "I" which shall benefit, burden and run with the Land and, as applicable, the Contiguous Parcel.

14.13 Severability. If any one or more of the provisions contained in this Agreement or in any document executed in connection herewith (other than provisions constituting a material consideration to a party's entering into this Agreement or such other document) shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the parties shall use their best efforts to achieve the purpose of the invalid provision.

14.14 Notices. All notices, certificates, requests, demands, and other communications hereunder shall be in writing and may be personally served or sent by telefax or certified or registered mail or any overnight courier service (operating on a national basis). All such notices, certificates, requests, demands and other communications shall be delivered to the Party to receive same at the addresses indicated below (or at such other address(es) as a Party may specify in a written notice):

To: Mason City School District  
  
Kevin L. Bright, Superintendent  
211 East North Street  
Mason, Ohio 45040

With a copy to:

Richard L. Gardner, Treasurer  
211 East North Street  
Mason, Ohio 45040

To: The City of Mason  
  
The City of Mason  
c/o Community Center Manager  
6000 Mason Montgomery Road  
Mason, Ohio 45040  
With a copy to:  
The City of Mason  
c/o City Manager  
6000 Mason Montgomery Road  
Mason, Ohio 45040

14.15 Waiver. No failure on the part of a Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy by a Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy available at law or in equity.

14.16 Subrogation. To the extent permitted by law, each Party ("Waiving Party") hereby releases, on behalf of such Waiving Party and its agents, employees, licensees and invitees (collectively, "Waiving Parties"), and, to the extent it is legally possible for it to do so, on behalf of all insurers providing such Waiving Parties with insurance coverage, the other Party and its agents, employees, licensees and invitees (collectively, "Released Parties") from any and all liability or responsibility under or in connection with any and all claims for recovery from the Released Parties (or any of them) for (a) any loss or damage to any of the Waiving Parties' property caused by any Casualty insured against or required to be insured against hereunder, even if such Casualty shall have been caused by the fault or negligence of the Released Parties (or any of them or of anyone for whom any of the Released Parties may be legally responsible), (b) any loss or damage to buildings or other improvements or the contents thereof, (c) any loss or damage as a result of interruption of any of the Waiving Parties' businesses (or any of them), (d) any loss or damage caused by the negligence or misconduct of the Released Parties (or any of them or of anyone for whom any of the Released Parties may be legally responsible) and/or (e) any other direct or indirect loss or damage caused by fire or other risks or by any other cause or origin, to the extent (and only to the extent) the loss or damage under subparagraphs (a), (b), (c), (d) and/or (e) of this Section 14.16 is covered or required under this Agreement to be covered (whether or not such required insurance is in effect) by standard fire and extended coverage insurance, all risk insurance, or commercial general liability insurance. Each Waiving Party hereby agrees to give immediately to any insurer that has issued to it the Additional Liability Insurance and any Insurance Policies described hereunder or any other insurance maintained by such Waiving Party in connection with this Agreement written notice of the mutual release contained in this Section and to have such policies endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of such mutual release.

14.17 Management. The School District may elect to retain the services of a property management company to perform the Basic Building Services, except as they relate to the Insurance Policies, provided that the hiring of any such management company shall not remove or terminate the respective obligations of each Party to perform the Basic Building Services in the event that such management company fails to adequately, timely or properly carry out the Basic Building Services pursuant to this Agreement.

14.18 Additional Facilities, Central Entrance Road and Perimeter Road. Notwithstanding anything herein to the contrary, with respect to all of the Additional Facilities (whether on the Land or the Contiguous Parcel) and that portion of the Perimeter Road located on the Contiguous Parcel, all rights and obligations with respect to maintaining and insuring (both for liability and Casualty) and restoring same in the event of a Condemnation or Casualty (and the rights to proceeds or awards in connection therewith) shall be governed by the terms and conditions of the Easement Agreement, as applicable thereto, and any costs and expenses incurred in connection therewith shall be paid in accordance with the Easement Agreement and shall not be paid from the Basic Building Services Fund or the Community Center Fund.



14.19 Catering of City Events. The Parties hereby agree that they will, in good faith, enter into an agreement, separate from this Agreement, regarding the terms and conditions upon which the School District will provide catering services to the Community Facilities.

14.20 Dedication. The Parties agree that in the event the School District desires to dedicate that portion of the Perimeter Road on the Land, or any portion of thereof, to the public, and/or the City desires to dedicate that portion of the Perimeter Road located on the Contiguous Parcel, or any portion of thereof, the other Party ("Other Party") shall agree to such dedication, and each Party shall execute and deliver any dedication plats, deeds or other instruments that may be required to effectuate such dedication, provided that the Other Party shall not be responsible for paying any performance or maintenance bonds that may be required in connection with such dedication or for any other costs and expenses associated with such dedication. Upon acceptance of the applicable portion of the Perimeter Road, as the case may be, the rights and obligations created with respect to such dedicated portion under this Agreement shall automatically be extinguished (including, without limitation, the obligation to provide or share in any Basic Building Services or Basic Building Services Costs with respect to such dedicated portion or the costs thereof). Also, in the event that, within one (1) calendar year from the Commencement Date, the School District dedicates that portion of the Perimeter Road located on the Land, the School District shall, in connection with such dedication, assign to the City any maintenance and/or performance bonds (if any) submitted to the School District by the contractor who constructed such portion of the Perimeter Road. Further, the School District acknowledges and agrees that an approval or variance from the applicable zoning authority may be required in connection with the School District's dedication of the foregoing portion of the Perimeter Road and that, though the City has agreed, in good faith, to support any application for such approval or variance, the City does not control such zoning authority or otherwise make the determination with respect to whether or not such approval or variance will be granted.

14.21 Time References. Whenever this Agreement refers to a time period (i.e. 5:00 a.m.), the time zone to which such time period is applicable shall be Eastern Standard Time.

14.22 Consent or Approval. Whenever the consent, approval or agreement of a party is required or requested hereunder, unless otherwise provided herein, such party shall at all times act in good faith and shall not unreasonably withhold or condition or unduly delay any such consent, approval or agreement.

14.23 Existing Costs and Expenses. The Parties acknowledge and agree that they have each incurred considerable start up costs and expenses in connection with the Project and this Agreement; however, each Party hereby agrees that it shall not be entitled to reimbursement from either the Basic Building Services Fund or the Community Center Fund for any such start up costs and expenses or to otherwise pay any such start up costs and expenses from the Basic Building Services Fund or the Community Center Fund to the extent such start up costs and expenses were incurred or sustained by such Party before the Commencement Date.

IN WITNESS WHEREOF, this Agreement is executed effective on the Effective Date.

MASON CITY SCHOOL DISTRICT

By: Kevin L. Bright  
Kevin L. Bright, its Superintendent

By: [Signature]  
Richard L. Gardner, its Chief  
Financial Officer / Treasurer

And as to Section 12.5 hereof only:

[Signature]  
Eric B. Kantor, (as President of the School  
Board


THE CITY OF MASON  
By: [Signature]  
Scot F. Lahrmer, its City Manager

By: [Signature]  
Jennifer Heft, its Finance Director

STATE OF OHIO )  
 ) ss:  
COUNTY OF WARREN )

BEFORE ME, a Notary Public in and for said County and State, did personally appear  
The City of Mason, by Scot F. Lahrmer, its City Manager, and by Jennifer Heft, its Finance  
Director, who each acknowledged to me that he/she did sign the foregoing instrument as such  
City Manager or Finance Director, as the case may be, and that the same is his/her free act and  
deed, both individually and as such officer of said city and the free act and deed of such city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at  
Warren County, Ohio this 28<sup>th</sup> day of February, 2003

[Signature]  
NOTARY PUBLIC  
  
STERLING WIGGS COLVIN  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.

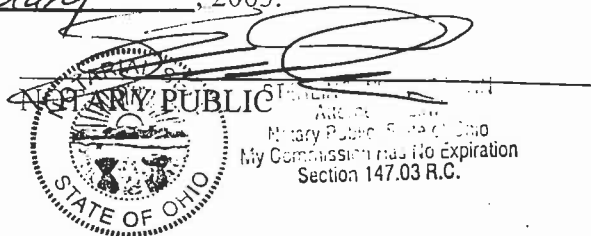
STATE OF OHIO )  
 ) ss:  
COUNTY OF WARREN )

BEFORE ME, a Notary Public in and for said County and State, did personally appear  
the Mason City School District, by Kevin L. Bright, its Superintendent, and by Richard L.  
Gardner, its Chief Financial Officer / Treasurer, who each acknowledged to me that he did sign  
the foregoing instrument as such Superintendent or Chief Financial Officer / Treasurer, as the

case may be, and that the same is his free act and deed, both individually and as such officers and the free act and deed of such school district.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Warren County, Ohio this 28<sup>th</sup> day of February, 2003.

STATE OF OHIO )  
 ) ss:  
COUNTY OF WARREN )



BEFORE ME, a Notary Public in and for said County and State, did personally appear the School Board of the Mason City School District, by Eric B. Kantor its President, who acknowledged to me that he did sign the foregoing instrument as such President and that the same is his free act and deed, both individually and as such officer and the free act and deed of said school board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Warren County, Ohio this 28<sup>th</sup> day of February, 2003.

[Signature]  
NOTARY PUBLIC

